

<p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -----x ANNE BRYANT, ELLEN BERNFELD, AND GLORYVISION, LTD., Plaintiffs, -against- EUROPADISK, LTD., MEDIA RIGHT PRODUCTIONS, INC., VERY COOL MEDIA, INC., DOUGLAS MAXWELL, THE ORCHARD ENTERPRISES, INC., and RUSSELL J. PALLADINO, Defendants. -----x Thursday February 21, 2008 10:15 a.m. EXAMINATION BEFORE TRIAL of the Defendant, THE ORCHARD ENTERPRISES, INC., by and through its witness, JASON PASCAL, taken pursuant to Notice, held at the offices of Rockland & Orange Reporting, 445 Hamilton Avenue, White Plains, New York, on the 21st day of February 2008, before a Notary Public of the State of New York. ROCKLAND & ORANGE REPORTING 20 South Main Street New City, New York 10956 (845) 634-4200</p>	<p>1 STIPULATIONS 2 3 IT IS HEREBY STIPULATED AND AGREED 4 by and between the attorneys for the respective 5 parties hereto that the sealing and filing of 6 the within deposition be waived; that such 7 deposition may be signed and sworn to before any 8 officer authorized to administer an oath with 9 the same force and effect as if signed and sworn 10 to before a Justice of this Court. 11 12 IT IS FURTHER STIPULATED AND AGREED that 13 all objections, except as to form, are reserved 14 to the time of trial. 15 16 IT IS FURTHER STIPULATED AND AGREED that 17 the within examination and any corrections 18 thereto may be signed before any Notary Public 19 with the same force and effect as if signed and 20 sworn to before this Court. 21 22 23 24 25</p>
<p>1 APPEARANCES: 2 3 MONAGHAN, MONAGHAN, LAMB & 4 MARCHISIO, ESQS. 5 Attorneys for Plaintiffs 6 28 West Grand Avenue 7 Montvale, New Jersey 07645 8 BY: MICHAEL KORIK, ESQ. 9 10 SHELOWITZ BRODER, LLP 11 Attorneys for Defendants 12 11 Penn Plaza, 5th Floor 13 New York, New York 10001 14 BY: MITCHELL C. SHELOWITZ, ESQ. 15 16 17 ALSO PRESENT: Darienne Grey 18 19 20 21 22 23 24 25</p>	<p>1 [2] [4] 1 Jason Pascal 2 JASON PASCAL, the Witness 3 herein, on behalf of the Defendant, 4 THE ORCHARD ENTERPRISES, INC., having 5 first been duly sworn by Kathryn 6 Lebeau, a Notary Public of the State 7 of New York, was examined and 8 testified as follows: 9 THE COURT REPORTER: Please state 10 your name for the record. 11 THE WITNESS: Jason Pascal. 12 THE COURT REPORTER: Will you 13 state your present address. 14 THE WITNESS: 100 Park Avenue, 15 Second Floor, New York, New York 16 10017. 17 (Prior to the Examination 18 Before Trial, Plaintiffs' Exhibit 19 Orchard-1, Product Representation 20 Agreement, marked for 21 identification; Plaintiffs' 22 Exhibit Orchard-2, two-page fax 23 dated 5/10/07, marked for 24 identification; Plaintiffs' 25 Exhibit Orchard-3, one-page</p>

<p>1 Jason Pascal 2 iTunes screen shot regarding "Songs 3 For Cats," marked for identification; 4 Plaintiffs' Exhibit Orchard-4, 5 one-page iTunes screen shot regarding 6 "Songs For Dogs," marked for 7 identification; Plaintiff's Exhibit 8 Orchard-5, one-page Rhapsody screen 9 shot regarding "Listen Free Songs For 10 Cats," marked for identification; 11 Plaintiffs' Exhibit Orchard-6, 12 ten-page document entitled "The 13 Orchard, Digital & CD Distribution," 14 marked for identification; 15 Plaintiffs' Exhibit Orchard-7, 16 one-page letter dated 2/1/00, marked 17 for identification; Plaintiffs' 18 Exhibit Orchard-8, two-page document 19 entitled "Songs For Cats - Inception 20 to Q107 By Store," marked for 21 identification; Plaintiffs' Exhibit 22 Orchard-9, two-page document entitled 23 "Songs For Dogs - Inception to Q107 24 By Store," marked for identification; 25 Plaintiffs' Exhibit Orchard-10,</p>	[5]	<p>1 Jason Pascal 2 Q. And what's your title at The 3 Orchard? 4 A. Vice President and Senior Counsel. 5 Q. And your business address? 6 A. 100 Park Avenue, Second Floor, New 7 York, New York 10017. 8 Q. Okay. And what's your educational 9 background? 10 A. I went to law school. 11 Q. Where? 12 A. Brooklyn. 13 Q. Okay. And where did you go to 14 undergrad? 15 A. Michigan. 16 Q. Okay. Did you graduate from 17 Brooklyn Law? 18 A. Yes. 19 Q. When? 20 A. Oh, what year? '95. 21 Q. And did you work anywhere before 22 The Orchard? 23 A. Yes. 24 Q. Where was that? 25 A. I had my own practice for a time and</p>
<p>1 Jason Pascal 2 three-page document entitled "The 3 Orchard, digital stores," marked 4 for identification; Plaintiffs' 5 Exhibit Orchard-11, one-page 6 document entitled "The Orchard, 7 cd stores," marked for 8 identification; Plaintiffs' 9 Exhibit Orchard-12, two-page 10 document entitled "The Orchard, 11 mobile partners," marked 12 for identification; Plaintiffs' 13 Exhibit Orchard-13, two-page 14 document entitled "The Orchard, 15 search results," marked for 16 identification; Plaintiffs' 17 Exhibit Orchard-14, one-page 18 document entitled "The Orchard, 19 release info," marked for 20 identification.) 21 EXAMINATION BY 22 MR. KORIK: 23 Q. Could you state and spell your name, 24 again, for the record. 25 A. Jason Pascal, J-A-S-O-N P-A-S-C-A-L.</p>	[6]	<p>1 Jason Pascal 2 I worked at an Internet music company for a 3 period of time and major label before that. 4 Q. Okay. Before your attendance here, 5 today, what documents did you review? 6 A. None. 7 Q. Okay. Have you seen the Complaint 8 in this case? 9 A. Yes. 10 Q. Okay. And did you review the 11 Complaint before you came here, today? 12 A. Not today. 13 Q. Okay. How long have you been with 14 The Orchard? 15 A. Three years. 16 Q. And did you replace someone or were 17 you hired to fill a new position at The Orchard? 18 MR. SHELOWITZ: Objection. 19 You can answer if you 20 understand the question. 21 THE WITNESS: I replaced 22 someone. 23 Q. Okay. And what are your day-to-day 24 responsibilities at The Orchard? 25 A. I'm part of the Legal Department.</p>

<p>1 Jason Pascal 2 So, I handle all legal issues from top to 3 bottom, and I'm, also, part of Senior 4 Management. So, to the extent that there are 5 needs for advice on the general direction of the 6 company, I'm, sometimes, part of those 7 decisions, as well. 8 Q. When you say "Legal Department," how 9 many attorneys are in the Legal Department? 10 A. Two attorneys. 11 Q. And how many staff? 12 A. Two attorneys and two other staff 13 members -- 14 Q. Okay. 15 A. -- that are not attorneys. 16 Q. And about, approximately, how many 17 people are at The Orchard now? 18 MR. SHELOWITZ: Objection 19 to the form. 20 Q. How many people are employed by 21 The Orchard now? 22 A. U.S.? Worldwide? 23 Q. In the U.S.? 24 A. Maybe, 60. 25 Q. Okay. And were you with the company</p>	<p>[9]</p> <p>1 Jason Pascal 2 company? 3 A. Today? 4 Q. Today? 5 A. Yes. 6 Q. Was the Orchard a publicly-held 7 company in 1999? 8 A. No. 9 Q. When did the company go public? 10 A. Via this merger in November. The 11 competitor we absorbed was public. So, through 12 that reverse merger, we are now public. 13 Q. That was November 2007? 14 A. Yes. 15 Q. Okay. In your own words, what would 16 you say the nature of the business of The 17 Orchard is? 18 A. Distribution of digital content. 19 Q. Now, when you say "distribution," I 20 want to take you through an example, 21 hypothetical example. I send you a CD. I'm a 22 record label. What do you do with it? 23 MR. SHELOWITZ: I'm going 24 to object to it. I don't 25 understand the question. It's</p>
<p>[10]</p> <p>1 Jason Pascal 2 in 1999? 3 A. No. 4 Q. Would you know how many people were 5 with the company in 1999 through 2000? 6 A. Less than 10. 7 Q. Okay. Now, is it a corporation? 8 A. Yes. 9 Q. Where is it incorporated? 10 A. We've just gone through a merger. 11 So, the way that it's set up, there's New York 12 and Delaware corporations, both. 13 Q. Okay. Who did you merge with? 14 A. We absorbed a competitor of ours in 15 the same space, company called "DMGI." 16 Q. Okay. And who are the officers of 17 The Orchard prior to the merger? 18 A. What do you mean by "officers"? 19 Q. How, exactly, is the company 20 structured? Are there shareholders? Is it 21 publicly held or was it a publicly-held company? 22 MR. SHELOWITZ: I'm going 23 to object to the form. There's 24 three questions in there. 25 Q. Is The Orchard a publicly-held</p>	<p>[12]</p> <p>1 Jason Pascal 2 a hypothetical. 3 Why don't you ask specific, 4 concrete questions he can answer? 5 Q. Okay. A record label sends you a 6 CD. How do you distribute it? 7 MR. SHELOWITZ: Objection 8 to the form. 9 Q. How is a CD distributed by 10 The Orchard? 11 MR. SHELOWITZ: Objection 12 to the form. 13 MR. KORIK: I don't see 14 the problem with that question. 15 MR. SHELOWITZ: Ask a 16 question that he can answer and 17 he will be happy to answer it. 18 Q. CDs, physical media is sent to 19 The Orchard. How does The Orchard -- 20 A. Not necessarily. That's not, 21 necessarily, how it's done. 22 Q. How does The Orchard obtain content 23 to distribute? 24 A. Through license agreements. 25 Q. Okay. And who are those license</p>

1 Jason Pascal 2 agreements with? 3 A. Content owners or exclusive 4 licensees. 5 Q. Can you give me an example of 6 content owner? 7 A. I would rather not. 8 Q. I'm not asking for a specific 9 entity. I'm just looking for a record label, a 10 band, a musician, something like that? 11 A. Any. Any of the above. 12 Q. So, could be any of the above? 13 A. Yes. 14 Q. Okay. What are some of the 15 organizations through which The Orchard 16 distributes its content? 17 MR. SHELOWITZ: Objection 18 to form. Foundation. 19 Q. How does The Orchard distribute its 20 content? Directly, to the consumer or via third 21 parties? 22 A. Third parties. We're a wholesaler. 23 Q. Okay. Can you list some of the 24 third parties through which The Orchard 25 distributes its content?	[13]	1 Jason Pascal 2 iTunes? 3 A. By check or wire. 4 Q. If a track is download at the rate 5 of .99 cents, how much of that goes to 6 The Orchard? 7 MR. SHELOWITZ: Objection 8 to the form. 9 THE WITNESS: I can't answer 10 that. I can't answer that. It's 11 confidential information about 12 the deals that we have with our 13 companies. I can't talk about 14 that. 15 MR. SHELOWITZ: More than that, 16 it's such a hypothetical question. 17 If you have specific things you 18 want to identify, you can show him. 19 If he can answer them, he will. 20 MR. KORIK: Okay. 21 MR. SHELOWITZ: If you're 22 going to ask vague and ambiguous 23 questions -- 24 MR. KORIK: There's, absolutely, 25 nothing vague or ambiguous about	[15]
1 Jason Pascal 2 A. iTunes. 3 Q. Any others? 4 A. Many others. Hundreds. Hundreds of 5 others. 6 Q. Okay. Worldwide? 7 A. Worldwide. 8 Q. Okay. Some iTunes, a track costs 9 .99 cents, do you agree, to download? 10 MR. SHELOWITZ: He's not 11 here to testify on behalf of 12 iTunes. He's here to testify 13 on behalf of The Orchard. 14 Q. How does The Orchard get paid by 15 iTunes? 16 A. They send us -- 17 MR. SHELOWITZ: Objection 18 to form. 19 MR. KORIK: What is the 20 problem with that question? 21 MR. SHELOWITZ: There's 22 no foundation. 23 Q. Does The Orchard get paid by iTunes? 24 A. Yes. 25 Q. How does The Orchard get paid by	[14]	1 Jason Pascal 2 that question. 3 MR. SHELOWITZ: Try to ask a 4 question he can answer. He'll be 5 more than happy to do so. 6 MR. KORIK: Can you show him 7 Exhibit Orchard-3. 8 MR. SHELOWITZ: Pardon me? 9 MR. KORIK: Can you show him 10 Exhibit Orchard-3. 11 Q. Can you take a look at that exhibit? 12 A. Yes. 13 Q. Now, can we agree that this is a 14 screen shot from iTunes? 15 A. No. 16 Q. No. Okay. 17 In your opinion, what are you 18 looking at? 19 MR. SHELOWITZ: Objection 20 to the form. He is not here to 21 give opinions on exhibits you're 22 showing him. 23 Why don't you identify the 24 exhibit so we can understand what 25 it is you're showing?	[16]

<p>1 Jason Pascal 2 Q. What you're looking at is a screen 3 shot from iTunes -- 4 A. Okay. 5 Q. -- from the iTunes store for 6 something called "Songs For Cats" -- 7 A. Uh-huh. 8 Q. -- and it is copyright 2000, 9 The Orchard? 10 MR. SHELOWITZ: Objection. 11 MR. KORIK: What's the 12 objection? 13 MR. SHELOWITZ: You're making 14 a legal conclusion on a document 15 you're just showing him for the 16 first time. 17 MR. KORIK: I'm reading the 18 document. That's all I'm doing. 19 MR. SHELOWITZ: I think we 20 disagree on that point. You can 21 say that, maybe, there's some 22 kind of indication there, but -- 23 MR. KORIK: There's an 24 indication that it says 2000, 25 copyright, Orchard.</p>	<p>[17]</p> <p>1 Jason Pascal 2 what's his opinion or understanding. 3 Q. What is your understanding what the 4 circle p symbol stands for? 5 A. It denotes copyright in an asset in 6 some form of expression. 7 Q. Okay. Now, the document you're 8 looking at, it purports to show Songs For Cats 9 being sold by iTunes for \$9.99. Who sets the 10 price of \$9.99? 11 MR. SHELOWITZ: Objection 12 to the form. 13 Q. Did The Orchard set \$9.99 as a price 14 for this product? 15 A. No. 16 Q. If a track is downloaded, Number 1 17 on the Sweetie Gourmet, for .99 cents, does 18 The Orchard receive a profit? 19 MR. SHELOWITZ: Objection 20 to the form. 21 Q. If an end consumer downloads Track 1 22 on the Sweetie Gourmet for .99 cents and pays 23 for it, .99 cents goes to iTunes, a portion of 24 that goes to The Orchard; true or false? 25 A. True.</p> <p>[19]</p>
<p>1 Jason Pascal 2 THE WITNESS: I see that it 3 says 2000. I see that it says 4 Orchard. I can't see what's in 5 the circle. Therefore, I can't 6 agree what you're saying. 7 Q. Okay. Are you familiar with a 8 circle p? 9 A. I am. 10 MR. SHELOWITZ: Objection 11 to the form. 12 MR. KORIK: What's the 13 problem with that? 14 MR. SHELOWITZ: It's vague 15 and ambiguous and there's no 16 foundation. 17 Are you familiar with 18 circle p? What do you mean 19 by familiar? 20 Q. Within the realm of copyright law, 21 what does the circle p stand for? As an 22 attorney? 23 MR. SHELOWITZ: Objection. 24 You can't ask him for legal 25 opinions here. You can ask him</p>	<p>[18]</p> <p>1 Jason Pascal 2 MR. SHELOWITZ: Objection. 3 MR. KORIK: Now, what's 4 your objection? 5 MR. SHELOWITZ: Again, you've 6 asked a hypothetical question and 7 assume that The Orchard is getting 8 something from the screen shot 9 you're showing him and you haven't 10 provided any kind of foundation. 11 Q. Did The Orchard distribute Songs For 12 Cats and Songs For Dogs? 13 A. Yes, for a period of time. 14 Q. Okay. And, during that period of 15 time, did The Orchard distribute these products 16 through iTunes? 17 A. I can't say for sure without having 18 looked at, you know, statements. 19 MR. KORIK: Can you show 20 the witness Orchard-8 and 21 Orchard-9. 22 Q. Can you identify these documents? 23 A. They are statements that we provided 24 of sales of these titles. 25 Q. Now, looking at this statement,</p> <p>[20]</p>

<p style="text-align: right;">[21]</p> <p>1 Jason Pascal 2 specifically, Orchard-8, can you answer the 3 question: Specifically, did iTunes sell Songs 4 For Cats?</p> <p>5 A. It appears that they did.</p> <p>6 Q. Okay. So, did The Orchard generate 7 revenue by selling Songs For Cats through 8 iTunes?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Was a portion of that revenue 11 passed onto a third party other than iTunes?</p> <p>12 A. Yes. The entity that gave us the 13 rights.</p> <p>14 Q. Okay. And who is the entity that 15 gave you those rights?</p> <p>16 A. I believe that the name of the 17 company is Media Right, R-I-G-H-T.</p> <p>18 Q. Now, earlier, you said 19 "distribution." Does distribution, also, 20 include streaming?</p> <p>21 A. It can.</p> <p>22 Q. What forms of distribution does 23 The Orchard have?</p> <p>24 A. We don't have any forms of 25 distribution. We're not a retailer. We provide</p>	<p style="text-align: right;">[23]</p> <p>1 Jason Pascal 2 different formats, also. So, there are 3 hundreds. MP3 is a prominent example.</p> <p>4 Q. Okay. What about ring tones?</p> <p>5 A. Yes, but you said format, so.</p> <p>6 Q. Well, is a ring tone a format?</p> <p>7 A. Not as that term is understood in 8 the industry.</p> <p>9 Q. Okay. So, what is a ring tone?</p> <p>10 A. A ring tone is a configuration, the 11 same way a CD or a tape would be a 12 configuration.</p> <p>13 Q. Okay. So, how many different 14 configurations of musical -- of media does 15 The Orchard sell?</p> <p>16 A. Several.</p> <p>17 MR. SHELOWITZ: Objection.</p> <p>18 Asked and answered.</p> <p>19 MR. KORIK: No, it hasn't 20 been asked and answered. So, 21 I would like you to answer that 22 question.</p> <p>23 THE WITNESS: Several. 24 I don't know the exact number. 25 I could count them. There are</p>
<p style="text-align: right;">[22]</p> <p>1 Jason Pascal 2 assets to retailers so that they can distribute.</p> <p>3 Q. Was The Orchard, at any one point, a 4 retailer?</p> <p>5 A. Never.</p> <p>6 Actually, can I add to that?</p> <p>7 There may have been a point very 8 early on in the company's history where you may 9 have been able to buy CDs from a website called 10 "theorchard.com." I have no knowledge of 11 whether that did or didn't happen. So, to say 12 never might not be accurate. I'm pretty sure 13 The Orchard was never a retailer.</p> <p>14 Q. Okay. Now, The Orchard, you said, 15 is a wholesale content distributor. In what 16 forms is that content sold?</p> <p>17 A. Both, digital and physical forms, 18 depending upon the rights that we receive.</p> <p>19 Q. And now, when you say digital, what 20 form of digital media?</p> <p>21 A. MP3s.</p> <p>22 Q. Any others?</p> <p>23 A. That's one of them. There are 24 hundreds. Mobile companies have hundreds of 25 different formats and Internet stores use many</p>	<p style="text-align: right;">[24]</p> <p>1 Jason Pascal 2 several.</p> <p>3 Q. Aside from a CD ring tone and MP3 4 and the various format types of MP3s, what other 5 forms does Media Right sell?</p> <p>6 A. I'm not here for Media Right.</p> <p>7 Q. What other forms does The Orchard 8 sell, distribute?</p> <p>9 A. Ring tones, streams, ringbacks. A 10 ringback is when a caller calls you and instead 11 of hearing ring-ring, they hear a song. That's 12 a ringback. CDs, but very very very 13 infrequently. We don't, generally, have those 14 rights. Permanent downloads via mobile via the 15 Internet.</p> <p>16 That's several of them. I don't 17 know that that's a complete list. There may be 18 others that if I thought it through.</p> <p>19 Q. Okay. Now, if a company -- Well, 20 let me give you a concrete example.</p> <p>21 MR. KORIK: Can you direct 22 the witness to look at Orchard-5.</p> <p>23 Q. What you're looking at is a screen 24 shot from the Rhapsody for Songs For Cats. 25 Now, the record label listed here is</p>

<p style="text-align: right;">[25]</p> <p>1 Jason Pascal 2 The Orchard. Was The Orchard in the record 3 label for this product? 4 A. I don't know. 5 Q. Was The Orchard ever a record label? 6 A. No. 7 Q. Well, how did The Orchard come to be 8 the record label for Songs For Cats in this 9 particular document? 10 A. I don't know the form. 11 MR. SHELOWITZ: Objection. 12 Q. Approximately, how many artists does 13 The Orchard represent? 14 A. It's a huge number. I don't know 15 how many artists. It's a gigantic number. 16 Q. 10,000? 17 A. Many many more. 18 Q. 500,000? 19 A. We have the rights to over a million 20 tracks. I don't know how many artists that is. 21 Q. Okay. Approximately, how many 22 labels? 23 MR. SHELOWITZ: Objection 24 to the form. 25 THE WITNESS: I really</p>	<p style="text-align: right;">[27]</p> <p>1 Jason Pascal 2 Q. Yes. 3 A. No. 4 Q. I would like to show you Orchard-6. 5 Is this a recent Orchard Digital and CD 6 Distribution Agreement? 7 MR. SHELOWITZ: Objection 8 to the form. 9 Q. How old is this Digital and CD 10 Distribution Agreement? 11 MR. SHELOWITZ: Objection 12 to the form. 13 Q. Is this Digital and CD Distribution 14 Agreement still valid? 15 MR. SHELOWITZ: Objection 16 to the form. 17 Q. Is this an Agreement that 18 The Orchard still uses? 19 MR. SHELOWITZ: Objection 20 to the form. 21 MR. KORIK: Okay. 22 MR. SHELOWITZ: How about 23 asking if this is something 24 The Orchard ever used? Like 25 can he identify it? Has he</p>
<p style="text-align: right;">[26]</p> <p>1 Jason Pascal 2 don't know. 3 MR. SHELOWITZ: He will 4 ask you a question. 5 THE WITNESS: Okay. 6 MR. SHELOWITZ: Just pause if 7 I have an objection. 8 THE WITNESS: Okay. 9 Q. Approximately, how many labels does 10 The Orchard represent? 11 A. I don't know. 12 Q. Since 1999-2000, have the digital 13 stores through which The Orchard sells its 14 media, have those changed? 15 MR. SHELOWITZ: Objection. 16 If you can pick one, either 17 1999 or 2000? 18 MR. KORIK: 1999? 19 THE WITNESS: They've grown. 20 There are more now than there 21 were then. 22 Q. Okay. Do you have a copy of The 23 Orchard agreement that it would sign with record 24 labels or musicians or artists circa 1999-2000? 25 A. Do I have it with me?</p>	<p style="text-align: right;">[28]</p> <p>1 Jason Pascal 2 ever seen it before? 3 Q. Can you identify this document? 4 A. I've never seen this particular 5 document before. 6 * MR. KORIK: Okay. I would 7 like to make a request for a 8 Digital CD Distribution Orchard 9 Agreement that you use, if you've 10 never seen this one, and this one 11 came from your website, actually, 12 but I would like to make a 13 document demand for one. 14 MR. SHELOWITZ: Okay. We'll 15 take it under advisement. 16 Q. Have you seen a copy of the 17 Agreement between Media Right and The Orchard? 18 A. Yes. 19 Q. Okay. Do you have a copy of that 20 Agreement with you? 21 A. No. 22 MR. KORIK: Can you show 23 the witness Orchard-2? 24 Q. Can you please identify what this 25 document is?</p>

<p>1 Jason Pascal</p> <p>2 A. This is a statement of the terms and</p> <p>3 conditions between an Orchard client, an Orchard</p> <p>4 content provider, and The Orchard.</p> <p>5 Q. Okay. Now, when would this document</p> <p>6 be sent to an Orchard client?</p> <p>7 MR. SHELOWITZ: Objection</p> <p>8 to the form.</p> <p>9 Q. Would this document be sent to an</p> <p>10 Orchard client?</p> <p>11 A. When?</p> <p>12 Q. I'm asking you that.</p> <p>13 A. When? I mean when do you mean? Our</p> <p>14 procedures have changed over the years.</p> <p>15 Q. Oh. In 2000?</p> <p>16 A. I didn't work there in 2000.</p> <p>17 Q. Are you familiar with how it would</p> <p>18 have been done in 2000?</p> <p>19 A. No.</p> <p>20 Q. Is there a witness that you can</p> <p>21 provide that is familiar with the procedures of</p> <p>22 The Orchard from 1999 or 2000?</p> <p>23 A. No.</p> <p>24 Q. Now, when would The Orchard send out</p> <p>25 this document?</p>	<p>1 Jason Pascal</p> <p>2 document?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay.</p> <p>5 A. It's possible, but it's, also, not</p> <p>6 possible.</p> <p>7 Q. Does The Orchard have in its</p> <p>8 possession a signed Agreement between Media</p> <p>9 Right and The Orchard?</p> <p>10 A. I believe so.</p> <p>11 MR. KORIK: I would like</p> <p>12 to see that document.</p> <p>13 MR. SHELOWITZ: We've</p> <p>14 produced everything --</p> <p>15 THE WITNESS: You have it.</p> <p>16 MR. SHELOWITZ: -- there</p> <p>17 is. There's a letter.</p> <p>18 MR. KORIK: He just said</p> <p>19 there's a document you have?</p> <p>20 THE WITNESS: That's the</p> <p>21 document.</p> <p>22 MR. SHELOWITZ: That's the</p> <p>23 document. You didn't ask if</p> <p>24 that's the one you marked as an</p> <p>25 exhibit. Why don't you ask if</p>
<p>1 Jason Pascal</p> <p>2 MR. SHELOWITZ: Objection</p> <p>3 to the form.</p> <p>4 Q. Now, would The Orchard send out this</p> <p>5 document to an Orchard client?</p> <p>6 A. It's not. No, it doesn't work that</p> <p>7 way.</p> <p>8 Q. Okay. Well, why don't you explain</p> <p>9 where this document would appear? How would an</p> <p>10 Orchard client obtain this document?</p> <p>11 A. It wouldn't. It's not done. We</p> <p>12 don't use this anymore. So, it's not done.</p> <p>13 Q. Okay. Are you familiar with when it</p> <p>14 would have been used?</p> <p>15 A. When it would have been used when?</p> <p>16 Q. Well, this particular document was</p> <p>17 produced by The Orchard. So, I'm assuming,</p> <p>18 since your company produced it, you could tell</p> <p>19 me when it would have been used?</p> <p>20 A. At some point in the contract</p> <p>21 process.</p> <p>22 Q. Okay.</p> <p>23 A. Before, during or after signing.</p> <p>24 Q. So, would The Orchard have obtained</p> <p>25 content from the client before sending this</p>	<p>1 Jason Pascal</p> <p>2 this is the Agreement?</p> <p>3 Q. Is this document the Agreement</p> <p>4 between The Orchard and Media Right?</p> <p>5 MR. SHELOWITZ: He can't</p> <p>6 tell. There's a letter you marked.</p> <p>7 I can show you if you want. You</p> <p>8 marked it as Exhibit 7, a letter</p> <p>9 between Media Right and The Orchard.</p> <p>10 Why don't you ask him if this is</p> <p>11 the Agreement? Why don't you help</p> <p>12 him to help you? He wants to give</p> <p>13 you the right answer. You're not</p> <p>14 asking the questions.</p> <p>15 Q. Can you show him Orchard-7. Is</p> <p>16 Orchard-7 the Agreement between Media Right and</p> <p>17 The Orchard?</p> <p>18 A. It's a portion of the Agreement.</p> <p>19 Q. And where is the rest of the</p> <p>20 Agreement?</p> <p>21 A. It's Orchard - It looks to be</p> <p>22 Orchard-2.</p> <p>23 Q. So, between Orchard-2 and Orchard-7,</p> <p>24 this is the entire Agreement between Media Right</p> <p>25 and The Orchard?</p>

<p>1 Jason Pascal 2 A. I believe so. 3 Q. There's no other provisions or any 4 other content or terms between Media Right and 5 The Orchard besides what is in this letter, 6 Orchard-7 and Orchard-2, the Agreement? 7 A. These documents are the Agreement. 8 Q. Does The Orchard assure that the 9 material that it distributes doesn't infringe on 10 any pre-existing copyrights? 11 MR. SHELOWITZ: Objection. 12 Use of "assure" there. 13 Q. How does The Orchard make sure that 14 the material that it distributes is not 15 infringing on anyone's copyright? 16 A. You get a representation of that 17 fact from the content provider. 18 Q. Okay. And is that representation 19 present in either Orchard-7 or Orchard-2? 20 A. It looks to be. 21 Q. Okay. And could you direct my 22 attention to that? 23 A. The last paragraph on Orchard-2. 24 Q. On which page? 25 A. On the first page of Orchard-2.</p>	<p>[33]</p> <p>1 Jason Pascal 2 A. I don't know. I'm only there, three 3 years. 4 Q. Okay. Is this the procedure now -- 5 A. Procedure is different now. We 6 don't use these documents anymore. 7 Q. How is the procedure different now? 8 MR. SHELOWITZ: He testified 9 he wasn't there then. So, he 10 doesn't know what the procedure 11 is then. You can ask if he knows 12 the procedure now, but can't 13 compare because he said he 14 wasn't there in 2000. 15 Q. My question was: What is the 16 procedure now? 17 MR. SHELOWITZ: Okay. 18 THE WITNESS: The documentation 19 is different, the wording is 20 different. If we feel a need to 21 investigate beyond the warranty 22 that we would obtain in the 23 Agreement, then we do so. 24 Q. But you're unaware of any obligation 25 to investigate in 1999 or 2000?</p>
<p>1 Jason Pascal 2 Q. And could you read that first 3 sentence into the record? 4 MR. SHELOWITZ: I'm going 5 to object. The document speaks 6 for itself. He doesn't need to 7 show you he can read English. 8 It's right here. You can read it 9 if you want. 10 Q. So, other than representation from 11 the content provider, The Orchard has no other 12 safeguards or takes no other steps to verify 13 that there is no infringement? 14 MR. SHELOWITZ: Objection 15 to the form. 16 Q. Does The Orchard take any other 17 steps to verify that there is no infringement 18 other than to take the warranty and 19 representation from the content provider that 20 they have the right to grant to you these 21 rights? 22 A. That's our general procedure. 23 Q. Was this the procedure in 1999? 24 A. I don't know. 25 Q. Was this the procedure in 2000?</p>	<p>[34]</p> <p>1 Jason Pascal 2 A. I told you I didn't work there at 3 that time. 4 Q. Okay. Now, how do the recordings 5 get to The Orchard? Either, digitally or a CD, 6 how does it get to you so that you can 7 distribute it, you being The Orchard? 8 A. In some physical form which could be 9 CD or some other fixed media or digitally. 10 Q. When you say "digitally," does that 11 mean somebody would send you a CD-ROM containing 12 MP3s or would somebody E-mail you files as 13 attachments? 14 A. Those can be ways that we get them. 15 We, also, get them via hard drive. We, also, 16 get them via some sort of electronic transfer 17 like FTP. 18 Q. Now, are you aware of how Songs For 19 Cats and Songs For Dogs went from physical media 20 to digital media? 21 A. I'm not aware of how it was done. 22 Q. Now, Orchard-7, it's a letter 23 directed to Sam Perlman. Who is Sam Perlman? 24 A. I don't know. 25 Q. Okay. Is Sam Perlman employed at</p>

<p>1 Jason Pascal 2 The Orchard now? 3 A. No. 4 Q. Now, according to the letter, it 5 reads, "The audio CD titles listed below will be 6 distributed by The Orchard under the terms and 7 conditions listed in your distribution 8 agreement." 9 Now, does that mean The Orchard was 10 going to be distributing the audio CDs, the 11 physical tangible discs? 12 MR. SHELOWITZ: Objection 13 The document speaks for itself. 14 MR. KORIK: Okay. 15 Q. So, where would The Orchard have 16 distributed audio CD titles listed on Orchard-7? 17 A. I don't understand the question. 18 Q. Okay. Well, it says, the letter 19 says that they will be distributed by 20 The Orchard under the terms and conditions, 21 okay, and I'm asking you: Where would 22 The Orchard have distributed these audio CD 23 titles pursuant to the terms of these 24 agreements? 25 A. They would be distributed pursuant</p>	<p>[37]</p> <p>1 Jason Pascal 2 letter or a supplemental 3 request. 4 MR. KORIK: Sure. 5 Q. Now, when the CDs were sent over to 6 Sam Perlman, how did they go from CD to whatever 7 format is sold by iTunes, Rhapsody or any of 8 your other digital content providers? 9 MR. SHELOWITZ: Objection. 10 You're assuming a fact he 11 has not testified to. 12 MR. KORIK: The letter speaks 13 for itself. Audio CD titles were 14 distributed. 15 So, at some point -- 16 MR. SHELOWITZ: Well, it says, 17 if I read that, correctly, it says 18 will be distributed. You just 19 asked when Sam received CDs and 20 you're assuming that he knows and 21 it's him, actually, receives CD. 22 There's a few assumptions in 23 that question. 24 Q. How would The Orchard have received 25 these titles for distribution?</p> <p>[39]</p>
<p>1 Jason Pascal 2 to the terms of the agreement. 3 Q. Okay. And where? 4 A. Through the distribution channels 5 that The Orchard had at that time. 6 Q. Okay. And what were the 7 distribution channels for distributing audio CDs 8 at that time? 9 A. I don't have a list. 10 * MR. KORIK: I would like a 11 list. 12 MR. SHELOWITZ: What do you 13 mean you would like a list? You 14 ask him a question. 15 MR. KORIK: I would like to 16 request a document from The 17 Orchard listing all the channels 18 on which audio CD titles as of 19 February 1st, 2000 would have 20 been distributed. 21 MR. SHELOWITZ: Okay. We'll 22 take it under advisement. 23 All these requests, if you 24 want to put them in a letter, 25 we'll be happy to respond, a</p>	<p>[38]</p> <p>1 Jason Pascal 2 A. What do you mean by how? By mail -- 3 Q. Okay. 4 A. -- or hand-delivered. 5 Q. So, did The Orchard receive these 6 titles for distribution? 7 A. I don't know. 8 Q. Well, how did The Orchard come to 9 distribute these titles? 10 A. We must have received them, somehow. 11 I don't know. 12 Q. Okay. How do recordings get from a 13 physical CD to an MP3? 14 A. You want the operational answer, the 15 technical answer? 16 Q. Sure. 17 A. The files on a CD are in a certain 18 format. It's called "Red Book Audio." They are 19 removed from the CD and converted into some 20 other format. 21 Q. Is this a process that is performed 22 by The Orchard? 23 A. Today? 24 Q. Yes. Today? 25 A. It is a process that's performed by</p> <p>[40]</p>

<p style="text-align: right;">[41]</p> <p>1 Jason Pascal 2 The Orchard, today. 3 Q. Is this a process that was performed 4 by The Orchard in 1999 or 2000? 5 A. I don't know. 6 Q. How would Songs For Dogs and Songs 7 For Cats be distributed by The Orchard in 1999 8 or 2000? 9 A. How would they have been 10 distributed? I don't follow. 11 Q. Would you have sold physical CDs, 12 ring tones, MP3s or, through any of the other 13 channels you testified earlier, how would you 14 have distributed these two titles in 1999 or 15 2000? 16 A. Depends on the rights that we 17 received. 18 Q. Okay. And which rights did you 19 receive? 20 A. We received the rights in accordance 21 with the document that you've shown me, 22 Orchard-2, to sell, distribute - this is 23 Paragraph 3 on the first page - to sell, 24 distribute and otherwise exploit the recordings 25 by any and all means and media, including</p>	<p style="text-align: right;">[43]</p> <p>1 Jason Pascal 2 Q. Okay. The cover art, also, appears 3 on Orchard-5, Orchard-4 and Orchard-3. There's 4 images of cover art, also, on other exhibits. 5 MR. SHELOWITZ: What is it? 6 3, 4 and 5? 7 MR. KORIK: 3, 4, 5, and 8 14, 13. 9 MR. SHELOWITZ: Okay. Well, 10 why don't you, when you address 11 a specific one, we'll show him 12 a specific one? 13 MR. KORIK: I'm discussing 14 cover art, in general. 15 Q. How does that image get to your 16 E-Stores or content resalers? 17 A. Do you mean operationally or 18 rights-wise? 19 Q. Both. Let's start with 20 operationally, first? 21 A. How do these images, these specific 22 images get there? 23 Q. Cover art, in general? 24 A. We deliver them. 25 Q. Okay. And by what means do you</p>
<p style="text-align: right;">[42]</p> <p>1 Jason Pascal 2 without limitation, what it then goes on to say. 3 Q. Okay. So, Paragraph 3 gave you the 4 right to sell the recordings throughout 5 E-stores, included, but not limited to, those 6 via the Internet, as well as all digital 7 storage, download and transmission rights, 8 whether now known or existing in the future? 9 Did that mean that, as of 1999-2000 when this 10 Agreement went into effect, they could sell 11 physical CDs? 12 A. We had the rights to sell by any and 13 all means and media. 14 Q. And, as of 1999 and 2000, what were 15 the known means and media that The Orchard sold 16 Songs For Cats and Songs For Dogs through? 17 A. We sold, at that time, physically, 18 meaning CDs. I don't know that that we sold, 19 digitally, yet, at that time. I don't know, 20 exactly, when that began. 21 Q. Okay. Now, we were discussing 22 ripping the CDs, earlier. You didn't use the 23 terminology "ripping." I'm using it now. Can 24 we agree what you described was ripping a CD? 25 A. Yes.</p>	<p style="text-align: right;">[44]</p> <p>1 Jason Pascal 2 deliver them? 3 A. Same means as we deliver the 4 recordings. 5 Q. And by what means do you deliver the 6 recordings? 7 A. Electronic or physically. 8 Q. Okay. How does the art go from a 9 tangible product to a digital image, such as the 10 ones in front of you? 11 MR. SHELOWITZ: Objection 12 to the form. 13 Q. How is the art transferred to a 14 digital file? 15 MR. SHELOWITZ: Objection 16 to the form. He's here as a 17 fact witness for The Orchard. 18 If you want to be specific -- 19 MR. KORIK: It's a process 20 that The Orchard converts this 21 and I'm trying to ask him about 22 this process. 23 MR. SHELOWITZ: Ask, but 24 ask the question so that, you 25 know, it's if he knows and,</p>

<p>1 Jason Pascal 2 you know, give him something 3 because there's no foundation 4 whatsoever in your question. 5 Q. Do you know how this cover art 6 becomes digitized or scanned or ripped? 7 A. Generally, yes. 8 Q. And how is that done? 9 A. We do it. I don't know how else to 10 tell it to you. I'm not in the Operations 11 Department. So, we do it. 12 Q. I'm not asking for anything 13 technical. It's something that The Orchard 14 does; correct? 15 A. Yes. 16 Q. Okay. Now, is a digital copy a 17 copy, in your opinion? 18 MR. SHELOWITZ: Objection. 19 MR. KORIK: It's pretty 20 straightforward. 21 Q. Is the digital copy the same as 22 physical copy? 23 A. I don't know in what context you're 24 asking the question. You're asking me if a copy 25 is a copy?</p>	<p>1 Jason Pascal 2 A. The day that we found out about this 3 litigation. 4 Q. And when did you begin distributing 5 Songs For Dogs, Songs For Cats? 6 A. I don't, exactly, know the date. 7 Q. What services does The Orchard, 8 currently, provide for Media Right Productions? 9 A. Encoding and distribution and 10 marketing, to some extent. 11 Q. What is encoding? 12 A. Encoding is the process of 13 converting titles into digital forms such that 14 they can be distributed through digital means. 15 Q. Did The Orchard perform encoding for 16 Songs For Dogs and Songs For Cats? 17 A. I don't know. 18 Q. But you do it for Media Right now? 19 A. When he delivers -- When Media Right 20 delivers new recordings to us, yes. 21 Q. Do you know what products The 22 Orchard distributed for Media Right? 23 A. When? 24 Q. Going back to 1999 through today? 25 A. It's a handful of titles. I</p>
<p>1 Jason Pascal 2 Q. Well, is a ripped CD stored on a 3 hard drive the same as a physical tangible CD 4 for purposes of a copy? Is a copy a copy, a 5 digital copy versus a tangible copy? 6 MR. SHELOWITZ: Objection 7 to form. I don't know where 8 you're going with this and I 9 don't even understand what 10 you're asking. I don't know 11 how you could expect him to 12 answer. 13 Q. All right. Are you familiar with 14 Media Right Productions? 15 A. Yes. 16 Q. Do you still distribute Media Right 17 Productions? 18 A. We still distribute some recordings 19 that they've provided to us, yes. 20 Q. Do you distribute Songs For Dogs or 21 Songs For Cats? 22 A. Not to my knowledge. No, not 23 anymore. 24 Q. Okay. And when did you cease 25 distributing Songs For Dogs and Songs For Cats?</p>	<p>1 Jason Pascal 2 remember seeing a list of 10, maybe, CDs. I 3 don't know the exact number of how many full 4 albums we distributed. 5 Q. Okay. And where did you distribute 6 these? 7 A. Through our distribution channels. 8 Q. All your distribution channels? 9 Select distribution channels? 10 A. It would have been subject to 11 whatever restrictions Media Right gave us. I 12 don't know what, if any, restrictions Media 13 Right gave us, but, certainly, it would be 14 subject to those territorial and other 15 restrictions. 16 Q. Now, Orchard-2, the document we had 17 referred to, earlier -- 18 A. Uh-huh. 19 Q. -- we had read Paragraph 3. 20 A. Yes. 21 Q. Did that paragraph give any 22 restrictions to how the product could be 23 distributed? 24 A. Can we take a second? 25 MR. SHELOWITZ: Take a</p>

<p>1 Jason Pascal 2 break, please. Be back in a 3 few minutes. 4 (Recess taken.) 5 MR. SHELOWITZ: Okay. 6 Maybe, you want to reread the 7 question? 8 MR. KORIK: I would, also, 9 like to note for the record that 10 the witness left in the middle 11 of an open question to discuss it 12 with his attorney. 13 Can you repeat the question, 14 please. 15 (Last question read.) 16 MR. SHELOWITZ: One note, 17 I would like to just put on the 18 record that, as Mr. Pascal's 19 company counsel, that, when 20 you're asking him to look at 21 and identify certain provisions 22 of a legal agreement that speak 23 for themselves, I think we have 24 to be very careful because he 25 can't, obviously, give you any</p>	[49]	<p>1 Jason Pascal 2 question and try -- 3 MR. KORIK: The question 4 was very specific before you 5 left to go and discuss your 6 answer out in the hall. The 7 question was open. 8 MR. SHELOWITZ: Right. 9 Well, there's nothing 10 objectionable between attorney 11 and client speaking and, 12 certainly, not when we're 13 dealing with the paramount 14 issue of attorney-client 15 privilege as it relates to 16 The Orchard. 17 So, if we deem that it's 18 appropriate and necessary to 19 do that in order to protect 20 the privilege and the company, 21 we, certainly, will do that. 22 MR. KORIK: I'm not asking 23 for anything privileged. 24 MR. SHELOWITZ: If you 25 feel you can answer this</p>	[51]
<p>1 Jason Pascal 2 kind of legal opinion and 3 anything that you're asking him 4 is really based upon a document 5 that speaks for itself. 6 So, I just want to note that 7 we have to be very careful about 8 where we tread. 9 MR. KORIK: Okay. It's 10 noted and I'm asking him for his 11 opinion, not legal advice. 12 MR. SHELOWITZ: And you're 13 asking him his opinion or what 14 something says? 15 MR. KORIK: I want him to 16 read it, I want him to 17 understand it and then I want 18 him to, in his own words, 19 explain if that paragraph gives 20 any restrictions. 21 MR. SHELOWITZ: Let me 22 object to that on the basis 23 that the document speaks for 24 itself. If you want to be 25 more specific with the</p>	[50]	<p>1 Jason Pascal 2 question without giving a legal 3 opinion, if you want to look at 4 a document, this speaks for 5 itself, and answer his question, 6 you can. If you feel that it's 7 treading too close, we'll say 8 that. 9 MR. KORIK: I would like you 10 not to answer the question for 11 him. 12 MR. SHELOWITZ: I'm not 13 answering the question. 14 THE WITNESS: Do you want 15 me to read the paragraph? 16 MR. KORIK: No. We've read 17 the paragraph, earlier. 18 Q. I'm asking for your opinion whether 19 that paragraph gives any restrictions? 20 A. Whether it gives restrictions? 21 Q. Do you want us to reread the 22 question? 23 A. No. I want you to ask me a question 24 that I understand. 25 Q. I'm sorry. I don't remember the</p>	[52]

<p style="text-align: right;">[53]</p> <p>1 Jason Pascal 2 exact wording of the question. Earlier, we were 3 discussing whether the products distributed by 4 The Orchard would have been distributed -- I 5 asked where they would have been distributed. 6 You said they would have been distributed 7 wherever there are agreements pursuant to 8 certain restrictions. I said, well, what are 9 those restrictions? And that's where we are, 10 today, right now.</p> <p>11 A. Yes, it gives us some restriction. 12 Q. Okay. And what are those 13 restrictions?</p> <p>14 A. The restrictions are that we don't 15 have the rights to sell, separately, for value, 16 anything other than the recordings.</p> <p>17 Q. Okay. Now, when you say 18 "separately, for value, anything other than the 19 recordings," can you give me an example of 20 something that's separate?</p> <p>21 MR. SHELOWITZ: Objection 22 to the form of the question.</p> <p>23 Q. Can you give me an example of what 24 you mean? What this restricts you from doing?</p> <p>25 MR. SHELOWITZ: Well,</p>	<p style="text-align: right;">[55]</p> <p>1 Jason Pascal 2 A. What it means is that we can't use, 3 for instance, an artist's name as an endorsement 4 or imply that that artist endorsed a product. 5 For instance, we can't say this particular 6 artist endorses this brand of laundry detergent. 7 That's what it means. We can sell the 8 recordings and use the associated data that goes 9 along with them and it, clearly, says we can do 10 that in exchange for value.</p> <p>11 Q. Okay. Now, this data, where does 12 The Orchard obtain this data?</p> <p>13 A. What data?</p> <p>14 Q. You said you used this data. So, 15 you explain to me what you mean by "this data"?</p> <p>16 A. Where do we obtain it?</p> <p>17 Q. Yeah.</p> <p>18 A. Where do we obtain the rights or, 19 operationally, where do we obtain it?</p> <p>20 Q. What do you mean by data?</p> <p>21 A. "Name" -- I'm reading right from the 22 Agreement. "Name, professional and/or group 23 names, photographs and other images," et cetera, 24 "biographical and/or other information" --</p> <p>25 Q. Okay. And where do you obtain the</p>
<p style="text-align: right;">[54]</p> <p>1 Jason Pascal 2 what restricts him from doing? 3 MR. KORIK: Paragraph 3. 4 MR. SHELOWITZ: He just 5 answered you. 6 MR. KORIK: No. He said -- 7 He didn't answer that question. 8 He said that there are 9 restrictions, but he didn't 10 specify what the restrictions 11 are. 12 MR. SHELOWITZ: He just -- 13 Did you want to repeat your 14 answer? 15 THE WITNESS: We can only 16 sell the recordings for value. 17 We can only get money for 18 selling the recordings. 19 Q. Okay. Well, does that mean, in 20 other words, you cannot give the recordings away 21 for free? 22 A. No, that's not what it means. 23 Q. Okay. In other words -- I don't 24 understand what you're saying. So, I'm asking 25 you to explain it to me?</p>	<p style="text-align: right;">[56]</p> <p>1 Jason Pascal 2 names, the photographs, et cetera? 3 MR. SHELOWITZ: Objection 4 to the form. 5 Q. How do you obtain this data? From 6 whom? 7 A. From our licensor. 8 Q. How did you obtain the information 9 for Songs For Dogs and Songs For Cats? 10 A. From our licensor. 11 Q. Okay. Looking at Orchard-4, 12 Orchard-4, at the top there, it says "Media 13 Right Productions." Do you see where it says 14 that? 15 A. Yes. 16 Q. And below that is an image 17 purporting to be Songs For Dogs? 18 A. Yes. 19 Q. Now, how did iTunes obtain the 20 information in this listing? 21 MR. SHELOWITZ: Objection. 22 MR. KORIK: What's your 23 objection? 24 MR. SHELOWITZ: You're 25 assuming that he knows how</p>

<p>1 Jason Pascal 2 iTunes got that and in this 3 shot, which we don't know that, 4 and so it's loaded with 5 assumptions. There's no basis 6 for the question. 7 Q. Does The Orchard hold itself out as 8 the record label for any of its artists? 9 A. We have, on occasion, released 10 records. 11 Q. Okay. Did Media Right release Songs 12 For Dogs or Songs For Cats? 13 A. I don't know what Media Right did. 14 MR. KORIK: Strike that. 15 I misspoke. 16 Q. I meant: Did The Orchard release 17 Songs For Dogs or Songs For Cats? 18 A. The Orchard did what The Orchard had 19 the rights to do pursuant to its Agreement with 20 Media Right. 21 Q. That wasn't my question. 22 My question was: Did The Orchard 23 release, as a record label, Songs For Cats or 24 Songs For Dogs? 25 A. We did what we had the rights to do</p>	<p>[57]</p> <p>1 Jason Pascal 2 Rhapsody obtain listing information for products 3 distributed by The Orchard? 4 A. They could get it any number of 5 places. 6 Q. Such as? 7 A. Such as I don't know their 8 business. I know that there are businesses that 9 aggregate and provide data and I know that there 10 are businesses that aggregate and provide 11 content which is more than data. I don't know 12 where they got it from. 13 Q. Does The Orchard provide this data 14 to any of its distributors -- resalers? 15 A. What data? 16 Q. Song titles? Song names? Artists' 17 names? 18 A. Photographs? 19 Q. Et cetera? 20 A. We do provide that data to many of 21 our stores. 22 Q. Can you give me some names of these 23 stores, for example? 24 A. ITunes. 25 Q. Any others?</p> <p>[59]</p>
<p>1 Jason Pascal 2 under the Agreement. 3 Q. You're still -- 4 A. I feel I'm answering the question. 5 Q. Did The Orchard act as a record 6 label for Songs For Cats or Songs For Dogs? 7 A. What do you mean by acting as a 8 record label? 9 Q. Enough such that Rhapsody or 10 Orchard-5 would list the record label for Songs 11 For Cats as The Orchard? 12 A. I don't know what Rhapsody's 13 practices are for listing data. 14 Q. Okay. Well, where would Rhapsody 15 obtain their data from? 16 MR. SHELOWITZ: Objection. 17 Q. Does The Orchard provide data to 18 Rhapsody? 19 A. Today, we do provide data to 20 Rhapsody. 21 Q. Okay. In five years ago, did you 22 provide data to Rhapsody? 23 A. I don't know the date of when our 24 Rhapsody Agreement began. 25 Q. Well, if you know, where would</p>	<p>[58]</p> <p>1 Jason Pascal 2 A. Yes. Many others. We've been 3 through this. 4 Q. I'm asking, specifically, limited to 5 this data? 6 A. To this particular data, I don't 7 know. 8 Q. Okay. Did The Orchard ever sell 9 physical CDs through Amazon? 10 A. In its history? 11 Q. Yes, in its history? 12 A. Yes. 13 Q. Does it still sell physical CDs 14 through the Amazon? 15 A. Through amazon.com? 16 Q. Yes. 17 A. Yes. 18 Q. Did amazon.com sell Songs For Dogs 19 and Songs For Cats as through The Orchard or 20 distributed by The Orchard? 21 A. I would have to look at the 22 statements again. 23 Q. Okay. Then you can look at 24 Orchard-8 and Orchard-9. Those are statements 25 provided by, I guess, The Orchard.</p> <p>[60]</p>

<p style="text-align: right;">[61]</p> <p>1 Jason Pascal 2 A. These statements indicate digital 3 sales only. I don't know what the physical 4 sales were. 5 So, I can't tell you if Amazon, 6 actually, sold any titles. 7 Q. Okay. Is that information available 8 somewhere? 9 A. I don't know. It's old data. 10 Management has changed, several times, at the 11 company. So, I don't know if it's available. 12 This is the data that we have. 13 Q. Now, this data, it says inception to 14 first quarter of '07; is that correct? 15 A. Yes. 16 Q. Okay. What is the inception date? 17 A. I don't know. 18 Q. Well, you provided me with data, but 19 you don't know when it's from? 20 A. I don't work in Finance. 21 Q. Okay. Is this a total listing of 22 all the stores that sold Songs For Dogs and 23 Songs For Cats? 24 A. Digitally, yes. 25 Q. Would this include ring tones?</p>	<p style="text-align: right;">[63]</p> <p>1 Jason Pascal 2 A. Paper statements? 3 Q. Yes. 4 A. Not for all clients. Some clients 5 have on-line -- Well, all clients have on-line 6 access, but we don't issue paper statements for 7 every label or every content provider. 8 Q. If you know, did Media Right receive 9 paper statements? 10 A. I don't know, but they would have 11 full access to all of the data. 12 Q. And where would that access be? 13 A. Through our on-line 14 password-protected space for Media Right and 15 Media Right, alone. 16 Q. Now, how is all that data tracked? 17 A. What do you mean? 18 Q. Okay. How is this data recorded to 19 you? How do you know that, for instance, eMusic 20 sold -- It says "Total Activity 23." So, what 21 does that 23 reflect? 22 A. .23 cents. 23 MR. SHELOWITZ: Can you 24 direct him to a specific 25 exhibit?</p>
<p style="text-align: right;">[62]</p> <p>1 Jason Pascal 2 Ringbacks? 3 A. Yes. As far as I know, there were 4 none of those products sold. 5 Q. But this does not include physical 6 sales? 7 A. I don't believe so. 8 Q. Do you know who drafted Orchard-2, 9 this document? 10 A. No, I don't know. 11 Q. How often would you pay Media Right 12 Productions? 13 A. Quarterly. 14 Q. And would that be when they hit a 15 certain minimum payment amount or just whatever 16 the amount is sent? 17 A. There are minimums. 18 Q. Do you know what those minimums are? 19 A. This Agreement says \$50.00. 20 Q. Were statements provided along with 21 the check to Media Right? 22 A. I didn't issue them. 23 Q. Okay. Is it The Orchard's practice 24 to provide statements to clients with their 25 royalty checks?</p>	<p style="text-align: right;">[64]</p> <p>1 Jason Pascal 2 MR. KORIK: Orchard-9, 3 the letter, we're looking for 4 Songs for Dogs, eMusic, under 5 Total Activity, there's a 6 number 23. 7 THE WITNESS: 23 is 8 23 downloads. 9 Q. And how do you know that it was only 10 23 downloads and not 53 or 230 or 5 million? 11 A. Because that's what they told us. 12 Q. And you rely on the data that they 13 provide to you? 14 A. Yes. 15 Q. Okay. How are promotional songs 16 counted, such as free u-trial memberships and 17 downloads and giveaways? 18 A. Those practices are different on a 19 retailer-by-retailer basis. 20 Q. Are those reported to you as sales? 21 A. By what retailer? 22 Q. Let's go, line-by-line. eMusic? 23 A. Yes. 24 Q. iTunes Australia? 25 A. They don't do that.</p>

[65]	[67]
<p>1 Jason Pascal</p> <p>2 Q. iTunes Austria?</p> <p>3 A. iTunes, there are different business</p> <p>4 models. You're asking questions that are all</p> <p>5 over the map that can be answered in boxes that</p> <p>6 you --</p> <p>7 Q. I asked you for a simple answer.</p> <p>8 A. No, they don't do that.</p> <p>9 Q. MSN Music?</p> <p>10 A. They, maybe. There are different</p> <p>11 business models. There are portions of them</p> <p>12 that have that section of them as business model</p> <p>13 and I believe they report them to us.</p> <p>14 Q. Okay. Musicmatch?</p> <p>15 A. Musicmatch doesn't exist anymore as</p> <p>16 a stand-alone service. I've never seen their</p> <p>17 statements.</p> <p>18 Q. MusicNet?</p> <p>19 MR. SHELOWITZ: General?</p> <p>20 Just if you can restate</p> <p>21 the question rather than,</p> <p>22 simply, naming the names in</p> <p>23 this list, I think it would</p> <p>24 be helpful.</p> <p>25 Q. Are free trials and free downloads</p>	<p>1 Jason Pascal</p> <p>2 A. Yes.</p> <p>3 Q. And what directed you to answer yes?</p> <p>4 What did you look at that gave you that answer?</p> <p>5 A. I looked at the column that said</p> <p>6 "S."</p> <p>7 Q. And, going column-by-column, what is</p> <p>8 DMS, the very first one?</p> <p>9 A. Digital Music Service.</p> <p>10 Q. And, going across, DT?</p> <p>11 A. Download Total.</p> <p>12 Q. DT\$?</p> <p>13 A. The dollar amount for each Download</p> <p>14 Total.</p> <p>15 Q. The next box, DA?</p> <p>16 A. DA, these are terms that Finance</p> <p>17 uses or Accounting uses in -- You know, it's</p> <p>18 their terminology. DA, I don't, exactly. I</p> <p>19 can't think of what it means.</p> <p>20 Q. Okay. S, we've established S\$ is</p> <p>21 revenue generated by streams?</p> <p>22 A. Yes.</p> <p>23 Q. DR?</p> <p>24 A. Download of ring tones.</p> <p>25 Q. Okay. And RB?</p>
[66]	[68]
<p>1 Jason Pascal</p> <p>2 reported to you by these providers that we are</p> <p>3 listing? We are on MusicNet.</p> <p>4 MR. SHELOWITZ: Are they</p> <p>5 or the record of free download?</p> <p>6 MR. KORIK: A record of</p> <p>7 free download or the trial</p> <p>8 download?</p> <p>9 THE WITNESS: If they're</p> <p>10 doing them, I believe they do</p> <p>11 report them to us.</p> <p>12 Q. And the same holds true for MusicNet</p> <p>13 Canada?</p> <p>14 A. I don't know for sure. Yes, they</p> <p>15 do.</p> <p>16 Q. Okay. And Music Now/Full Audio?</p> <p>17 A. I don't know what their model was.</p> <p>18 So, I don't know if they would have reported</p> <p>19 them to us. That's another company that no</p> <p>20 longer exists.</p> <p>21 Q. And RealNetworks?</p> <p>22 A. RealNetworks would, also, report</p> <p>23 them to us.</p> <p>24 Q. Now, do these numbers reflect</p> <p>25 streams?</p>	<p>1 Jason Pascal</p> <p>2 A. Ringbacks.</p> <p>3 Q. And TD?</p> <p>4 A. TD, I don't know what TD means.</p> <p>5 Q. Okay. Going back to Orchard-2, it's</p> <p>6 the Agreement, did that document allow a product</p> <p>7 given to you by Media Right to be severed, to be</p> <p>8 sold, track-by-track?</p> <p>9 MR. SHELOWITZ: Objection.</p> <p>10 The document speaks for itself.</p> <p>11 Q. Does The Orchard have a practice of</p> <p>12 selling records or recordings as complete</p> <p>13 downloads, meaning not track-by-track but you</p> <p>14 can only purchase them as a complete recording,</p> <p>15 all tracks, including all cover art?</p> <p>16 A. When we have the right to exploit --</p> <p>17 By to exploit any and all of the recordings by</p> <p>18 any and all means and media, yes.</p> <p>19 Q. You're answering my prior question</p> <p>20 with that?</p> <p>21 MR. SHELOWITZ: He's answering</p> <p>22 your current question. You can</p> <p>23 ask for a readback. He answered,</p> <p>24 exactly, what you asked.</p> <p>25 Q. Okay. So, Paragraph 3 allows</p>

<p>1 Jason Pascal 2 The Orchard to sell, track-by-track? 3 MR. SHELOWITZ: Objection 4 to form. The document speaks 5 for itself. 6 You have a legal document. 7 Why are you asking a lawyer for 8 an interpretation? 9 MR. KORIK: You produced a 10 lawyer. 11 MR. SHELOWITZ: We produced 12 a representative of the company 13 and you have a document that 14 speaks for itself. 15 MR. KORIK: I'm not asking 16 for a legal opinion. I'm asking 17 for an interpretation. 18 MR. SHELOWITZ: You have a 19 document that says certain things. 20 Q. Now, this document refers to "the 21 Territory." You provide "throughout the 22 Territory." What is "the Territory"? 23 MR. SHELOWITZ: I'm just 24 going to make the same 25 objection. This is a document</p>	<p>[69]</p> <p>1 Jason Pascal 2 A. On the master side or on the 3 composition side? 4 Q. Either one? 5 A. Not on the composition side. Those 6 aren't our rights to grant. We don't have the 7 right to collect those royalties because we 8 don't trade in compositions. 9 On the master side, we collect them 10 if we're given the rights to do so by the label. 11 Q. Were you given the rights to do so 12 in Songs For Dogs and Songs For Cats? 13 A. We have the rights to distribute by 14 any and all means and media now known or 15 existing in the future. 16 So, if there are performance 17 royalties, we will try to collect them and they 18 will be remitted as we receive them. 19 Q. Are you aware if performance 20 royalties were collected on behalf of Songs For 21 Dogs and Songs For Cats? 22 A. Do you mean on the master side or on 23 the composition side? 24 Q. Both? 25 A. We never collect on the composition</p>
<p>1 Jason Pascal 2 that speaks for itself. 3 MR. KORIK: The document 4 doesn't define Territory. 5 THE WITNESS: Yes, it does. 6 If you read it, you would know. 7 MR. KORIK: Feel better? 8 MR. SHELOWITZ: I object to 9 that. 10 Q. Where does it say "Territory"? 11 MR. SHELOWITZ: That was 12 disrespectful to the witness. 13 Q. Where is Territory defined? 14 A. It's in the document. 15 Q. Okay. I would like -- 16 A. It's on Page 2 of the document. 17 Q. Can you read it? 18 A. Yeah. Territory means the universe. 19 Q. Okay. Thank you. That's what I was 20 looking for. 21 Does The Orchard collect performance 22 royalties? 23 A. What type of performance royalties 24 do you mean? 25 Q. For streaming?</p>	<p>[70]</p> <p>1 Jason Pascal 2 side. It's not our purview. 3 On the master side, I don't know if 4 we've gotten anything. 5 Q. And where would that information be 6 available? 7 A. From the society that administers 8 those royalties. It's called "Sound Exchange." 9 Q. And who would report this 10 information to Sound Exchange? Would it be 11 The Orchard? 12 A. Which information? 13 Q. The master royalties? 14 A. It could be The Orchard or it could 15 be the store. 16 Q. Okay. Did anyone at The Orchard 17 take the responsibility for the accuracy of the 18 information contained on third-party stores? 19 A. What information? 20 Q. If a track listing was misspelled or 21 an artist's name was misspelled, was there 22 somebody at The Orchard that would oversee that? 23 MR. SHELOWITZ: Objection. 24 Misspelled where and in what 25 context?</p>

<p style="text-align: right;">[73]</p> <p>1 Jason Pascal 2 Q. If Songs For Dogs was listed on 3 iTunes as Songs Cats, missing the word "For," 4 would somebody at The Orchard correct it? 5 A. Maybe. 6 Q. Is there somebody at The Orchard 7 that had that responsibility to oversee and 8 track third-party resalers to make sure that all 9 listings were correct? 10 A. I don't know. 11 Q. Does your answer change for 1999 12 through 2000? 13 A. I don't know. I didn't work there. 14 Q. Okay. If a CD has a listing, 15 specific listing, copyright, let's say, in 2000, 16 how would -- Let's use a particular one, CD 17 Songs For Dogs and Songs For Cats says copyright 18 1996 slash 1997, Anne Bryant and Ellen Bernfeld, 19 how did it become copyright The Orchard on 20 iTunes? 21 A. I don't know. 22 Q. Do you find that to be a problem 23 that the iTunes is listing you as the copyright 24 holder? 25 MR. SHELOWITZ: Objection.</p>	<p style="text-align: right;">[75]</p> <p>1 Jason Pascal 2 of the Product Representation Agreement by Media 3 Right when Media Right entered into the 4 Agreement with The Orchard to distribute Songs 5 For Dogs and Songs For Cats? 6 A. I don't know. 7 Q. Do you know if The Orchard keeps a 8 file on -- a paper file on Media Right 9 Productions? 10 A. Yes. 11 Q. Would you know if a copy of this 12 Agreement is in that file? 13 A. It is, currently, because of this 14 litigation. 15 Q. Prior to this litigation, was a copy 16 of this? 17 A. Not to my knowledge. 18 Q. And where is this paper file 19 maintained? 20 A. In our office. 21 Q. Is it in the Legal Department or 22 somewhere else? 23 A. It's not separated like that. We 24 just have files in an office and they're Legal 25 Department's files.</p>
<p style="text-align: right;">[74]</p> <p>1 Jason Pascal 2 Q. Earlier, you said that The Orchard 3 was a record label and you released certain 4 recordings. How many recordings did The Orchard 5 release? 6 A. The Orchard acts as record label, on 7 occasion, and very very rare occasion. We've 8 released, maybe, two records and those have been 9 within the last year, year and a half. 10 Q. And none of which were Songs For 11 Dogs and Songs For Cats? 12 A. No, they were not Songs For Dogs and 13 Songs For Cats. 14 Q. Okay. Were you ever shown a copy of 15 the Product Representation Agreement? 16 A. I've seen it. 17 MR. KORIK: Okay. Can 18 you show the witness Orchard-1. 19 MR. SHELOWITZ: He doesn't 20 have the exhibit yet. 21 MR. KORIK: Oh. 22 Q. Can you just take a moment to read 23 it. 24 A. Okay. 25 Q. Was The Orchard provided with a copy</p>	<p style="text-align: right;">[76]</p> <p>1 Jason Pascal 2 Q. Was that file created, specifically, 3 for the purposes of litigation or you had the 4 file prior to litigation? 5 A. We have a litigation file and then 6 we have a contract file. 7 Q. Okay. Reading this Agreement, does 8 this Agreement grant Media Right Productions the 9 right to grant those rights which we described 10 in Paragraph 3? 11 MR. SHELOWITZ: I'm going 12 to object. This is a document 13 that The Orchard is not a party 14 to. The document speaks for 15 itself. Mr. Pascal is here as 16 a fact witness, not as a legal 17 advisor or someone to interpret 18 a contract between third party 19 and your client. 20 So, I think that's, 21 completely, out of line and 22 very objectionable. 23 MR. KORIK: Okay. 24 Can we direct the witness 25 to look at Orchard-6.</p>

<p>1 Jason Pascal 2 Orchard-6 is an Agreement 3 printed in The Orchard's website. 4 MR. SHELOWITZ: When? 5 MR. KORIK: I don't have the 6 exact date written on it, but I 7 don't, actually, know. 8 MR. SHELOWITZ: Do you know 9 who printed it out? 10 MR. KORIK: Anne Bryant 11 or Ellen Bernfeld. I'm pretty 12 sure it's Anne Bryant. 13 THE WITNESS: Okay. 14 Q. I would like you to look at Page 15 Number 3. Who would provide the answers to this 16 information? 17 A. The licensor. 18 Q. Okay. Page 4, who would provide the 19 answers to fill in that information? 20 A. The licensor. 21 Q. Who would select the wholesale 22 price? 23 A. The licensor. 24 Q. Who would provide the name of the 25 record label?</p>	<p>[77]</p> <p>1 Jason Pascal 2 Media Right Productions. How did Media Right 3 Productions become the artist on that CD? 4 A. That must have been the data we were 5 provided. 6 Q. By whom? 7 A. The licensor. 8 Q. And, in this case, would the 9 licensor be Media Right Production? 10 A. The licensor would be Media Right 11 Productions. 12 Q. Okay. And where the label is listed 13 as Media Right, would that information have been 14 provided by Media Right Productions? 15 A. Yes. 16 Q. Okay. Orchard-14, under UPC, where 17 would that UPC number come from? 18 A. That's assigned by The Orchard. 19 It's an Orchard UPC. 20 Q. In what circumstances does 21 The Orchard assign a UPC? 22 A. In every circumstance. 23 Q. Even if a product already has a UPC? 24 A. We assign our own UPCs in addition 25 so that we can track the recordings as they come</p>
<p>1 Jason Pascal 2 A. The licensor. 3 Q. Page 5, Track Info, who would 4 provide all of this, track details? 5 A. The licensor. 6 Q. Who would provide the ISRC number? 7 A. The licensor. 8 Q. And who would provide the 9 performance rights information? 10 A. The licensor. 11 Q. And all of this data, what would 12 The Orchard do with it once it was provided by 13 the licensor? 14 A. Compile it, aggregate it, distribute 15 it along with the recordings. 16 Q. And, when you say "distribute," who 17 would it distribute to? 18 A. To its retail partners. 19 Q. Okay. So, Exhibit 13, 14, yeah, 20 let's look at 13 and 14. There's a printout 21 from The Orchard's website from August 25th, 22 2005 and January 29th, 2007. Looking at 23 Orchard-13, it's a listing for Songs For Dogs 24 from The Orchard's website. 25 Now, the artist here is listed as</p>	<p>[78]</p> <p>1 Jason Pascal 2 in. 3 Q. Are the recordings tracked for 4 purposes of sales by the original UPC or 5 The Orchard UPC? 6 A. I believe, physically, they're 7 tracked by the original UPC and, digitally, by 8 ours. 9 Q. And those sales, are they reported 10 somewhere? 11 A. Which sales? 12 Q. Digital or physical? 13 A. Are they reported somewhere? Yes. 14 Q. To whom are they reported? 15 A. They're reported to us. 16 Q. Okay. Any other organizations? 17 A. The retailers might notify 18 performing right societies depending upon the 19 area of business that they're in or they may 20 not. 21 Q. Okay. Who was responsible for 22 securing and maintaining mechanical licenses for 23 Songs For Dogs and Songs For Cats? 24 A. The licensor. 25 Q. In this case, that would be Media</p>

<p>[81]</p> <p>1 Jason Pascal 2 Right Productions? 3 A. Yes. 4 Q. Are you aware if these licenses were 5 obtained for Songs For Dogs and Songs For Cats? 6 A. You would have to ask the licensor. 7 Q. How is it that Mr. Shelowitz is 8 representing The Orchard? 9 A. In accordance with our arrangement 10 with Media Right, Media Right indemnifies us for 11 third-party claims and Mr. Shelowitz is Media 12 Rights' attorney. 13 Q. Are you aware of Plaintiffs' 14 document production requests? 15 A. My attorney is. 16 Q. But are you? Did your attorney show 17 them to you? 18 A. I believe so. 19 Q. Yes or no? 20 A. I believe so. 21 Q. So, you've looked at these 22 documents? 23 A. Yes, I've seen them. 24 Q. And the documents you've provided to 25 your attorney, I guess, previously, was</p>	<p>[83]</p> <p>1 Jason Pascal 2 Q. Okay. And all the responses, all 3 the documents that were produced, who gathered 4 those? 5 A. I gathered the documents that my 6 attorney advised me to gather. 7 Q. Okay. And were documents withheld 8 on the grounds of privilege? 9 A. Not to my knowledge. 10 Q. So, everything that you had that was 11 responsive to the demand was produced? 12 A. I gathered the documents that my 13 attorney advised me to gather. 14 Q. Okay. And where were these 15 documents maintained? 16 A. The Orchard offices. 17 Q. Okay. And is there somebody in 18 charge of maintaining those records? 19 A. Which records? 20 Q. The records that we're discussing 21 that you gathered? 22 A. Well, what was gathered is in 23 various different categories. So, there are 24 people that are in charge of Finance documents, 25 there are people in charge of Operations and the</p>
<p>[82]</p> <p>1 Jason Pascal 2 Mr. Millman or Mitch here, those documents that 3 you provided were responsive to those demands? 4 MR. SHELOWITZ: Objection. 5 You're getting very close to 6 attorney-client privilege 7 discussions. I don't know 8 where you're going. If you want 9 to have a specific question and 10 if you want to show him a 11 document request, if you want to 12 have a specific question about a 13 document, something unrelated to 14 what we communicated with each 15 other or he communicated with 16 Mr. Millman, demands, please do 17 that. Otherwise, I'm going to 18 caution you. 19 Q. Okay. Who showed you the document 20 production request? Millman or Shelowitz? 21 A. I don't know the exact dates. It 22 depends on when you sent it because Millman was 23 the attorney for a time -- 24 Q. Okay. 25 A. -- and then it changed.</p>	<p>[84]</p> <p>1 Jason Pascal 2 Distribution. So, they're not - they're not - 3 litigation documents are not -- 4 Q. Okay. 5 A. -- supervised by one person other 6 than the Legal Department. 7 Q. All right. Orchard-8, where does 8 that information come from? 9 A. The Accounting Department. 10 Q. Would anybody else besides the 11 Accounting Department have this information? 12 A. There are other people that would 13 have access to it because it's available, 14 on-line. So, those that work in that area, the 15 operation of our on-line systems, would be able 16 to see it, but it's maintained by the Accounting 17 Department. 18 Q. What's your familiarity with 19 Copyright Law? 20 A. I'm familiar with Copyright Law. 21 Q. Okay. Did you practice in the field 22 of Copyright Law? 23 A. I do practice in the field of 24 Copyright Law. 25 Q. And, prior to The Orchard, did you?</p>

<p>1 Jason Pascal</p> <p>2 A. Yes.</p> <p>3 Q. Did you practice in that field?</p> <p>4 And are you aware that there must be</p> <p>5 a writing to transfer a copyright?</p> <p>6 MR. SHELOWITZ: Objection.</p> <p>7 This is a fact deposition,</p> <p>8 this is a fact witness and I</p> <p>9 don't know where you're going</p> <p>10 with this or what you want, but</p> <p>11 the law is what the law is and</p> <p>12 he's not here to testify about</p> <p>13 his understanding about Copyright</p> <p>14 Law. We have the books and cases</p> <p>15 and the Court for that.</p> <p>16 MR. KORIK: Okay. I don't</p> <p>17 have any further questions.</p> <p>18</p> <p>19</p> <p>20 Jason Pascal</p> <p>21 Sworn to before me this</p> <p>22 day of</p> <p>23 2008.</p> <p>24</p> <p>25 Notary Public</p>	<p>[85]</p> <p>1 Jason Pascal</p> <p>2 E X H I B I T S</p> <p>3 (Continued)</p> <p>4 Plaintiffs' Description Page</p> <p>5 Orchard-10 Three-page document entitled 6 "The Orchard, digital stores"</p> <p>6 Orchard-11 One-page document entitled 6 "The Orchard, cd stores"</p> <p>7 Orchard-12 Two-page document entitled 6 "The Orchard, mobile partners"</p> <p>8 Orchard-13 Two-page document entitled 6 "The Orchard, search results"</p> <p>9 Orchard-14 One-page document entitled 6 "The Orchard, release info"</p> <p>10 * * *</p> <p>11 REQUEST FOR PRODUCTION</p> <p>12 Page Line Description</p> <p>13 28 6 Digital CD Distribution Orchard</p> <p>14 Agreement that the witness uses</p> <p>15 38 10 A document from The Orchard</p> <p>16 listing all the channels on</p> <p>17 which Audio CD titles as of</p> <p>18 February 1st, 2000 would have</p> <p>19 been distributed</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>[86]</p> <p style="text-align: center;">C E R T I F I C A T I O N</p> <p>I, Kathryn Lebeau, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:</p> <p>That the witness whose examination is hereinbefore set forth was duly sworn by a Notary Public and that the transcript of examination is a true record of the testimony given by the said witness; and</p> <p>That I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.</p> <p style="text-align: right;">Kathryn Lebeau</p>
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<p>A</p> <p>able 22:9 84:15 absolutely 15:24 absorbed 10:14 11:11 access 63:6,11,12 84:13 Accounting 67:17 84:9,11,16 accuracy 72:17 accurate 22:12 act 58:5 acting 58:7 action 88:15 Activity 63:20 64:5 acts 74:6 add 22:6 addition 79:24 address 4:13 7:5 43:10 administer 3:8 administers 72:7 advice 9:5 50:11 advised 83:6,13 advisement 28:15 38:22 advisor 76:17 aggregate 59:9,10 78:14 ago 58:21 agree 14:9 16:13 18:6 42:24 AGREED 3:3,12,16 agreement 4:20 26:23 27:6,10,14,17 28:9 28:17,20 31:8 32:2 32:3,11,16,18,20,24 33:6,7 35:23 37:8 38:2 42:10 49:22 55:22 57:19 58:2,24 62:19 68:6 74:15 75:2,4,12 76:7,8 77:2 86:5 87:19 agreements 12:24 13:2 37:24 53:7 albums 48:4 allow 68:6 allows 68:25 Amazon 60:9,14 61:5 amazon.com 60:15 60:18 ambiguous 15:22,25 18:15 amount 62:15,16 67:13 and/or 55:22,24 Anne 1:4 73:18 77:10 77:12 answer 8:19 12:4,16</p>	<p>12:17 15:9,10,19 16:4 21:2 23:21 32:13 40:14,15 46:12 51:6,25 52:5 52:10 54:7,14 65:7 67:3,4 73:11 answered 23:18,20 54:5 65:5 68:23 answering 52:13 58:4 68:19,21 answers 77:15,19 anybody 84:10 anymore 30:12 35:6 46:23 65:15 anyone's 33:15 appear 30:9 appears 21:5 43:2 appropriate 51:18 approximately 9:16 25:12,21 26:9 area 80:19 84:14 arrangement 81:9 art 43:2,4,14,23 44:8 44:13 45:5 68:15 artist 55:4,6 78:25 79:3 artists 25:12,15,20 26:24 57:8 59:16 artist's 55:3 72:21 Aside 24:3 asked 20:6 23:18,20 39:19 53:5 65:7 68:24 asking 13:8 27:23 29:12 32:14 37:21 45:12,24,24 46:10 49:20 50:3,10,13 51:22 52:18 54:24 60:4 65:4 69:7,15 69:16 asset 19:5 assets 22:2 assign 79:21,24 assigned 79:18 associated 55:8 assume 20:7 assuming 30:17 39:10 39:20 56:25 assumptions 39:22 57:5 assure 33:8,12 attachments 36:13 attendance 8:4 attention 33:22 attorney 18:22 49:12 51:10 81:12,15,16 81:25 82:23 83:6,13 attorneys 2:5,12 3:4</p>	<p>9:9,10,12,15 attorney-client 51:14 82:6 audio 37:5,10,16,22 38:7,18 39:13 40:18 66:16 87:22 August 78:21 Australia 64:24 Austria 65:2 authorized 3:8 available 61:7,11 72:6 84:13 Avenue 1:19 2:6 4:14 7:6 aware 36:18,21 71:19 81:4,13 85:4 a.m 1:13</p>	<p>22:9 40:18 72:8 caller 24:10 calls 24:10 Canada 66:13 careful 49:24 50:7 case 8:8 79:8 80:25 cases 85:14 categories 83:23 Cats 5:3,10,19 17:6 19:8 20:12 21:4,7 24:24 25:8 36:19 41:7 42:16 46:21,25 47:5,16 56:9 57:12 57:17,23 58:6,11 60:19 61:23 71:12 71:21 73:3,17 74:11 74:13 75:5 80:23 81:5 86:8,13,19 caution 82:18 cd 5:13 6:7 11:21 12:6,9 23:11 24:3 27:5,9,13 28:8 36:5 36:9 37:5,16,22 38:18 39:6,13,21 40:13,17,19 42:24 46:2,3 73:14,16 79:3 86:15 87:8,18 87:22 CDs 12:18 22:9 24:12 37:10 38:7 39:5,19 41:11 42:11,18,22 48:2 60:9,13 CD-ROM 36:11 cease 46:24 cents 14:9 15:5 19:17 19:22,23 63:22 certain 40:17 49:21 53:8 62:15 69:19 74:3 certainly 48:13 51:12 51:21 certify 88:6 cetera 55:23 56:2 59:19 change 73:11 changed 26:14 29:14 61:10 82:25 channels 38:4,7,17 41:13 48:7,8,9 87:21 charge 83:18,24,25 check 15:3 62:21 checks 62:25 circa 26:24 circle 18:5,8,18,21 19:4 circumstance 79:22 circumstances 79:20</p>	<p>City 1:24 claims 81:11 clearly 55:9 client 29:3,6,10 30:5 30:10,25 51:11 76:19 clients 62:24 63:4,4,5 close 52:7 82:5 collect 70:21 71:7,9 71:17,25 collected 71:20 column 67:5 column-by-column 67:7 come 25:7 40:8 79:17 79:25 84:8 communicated 82:14 82:15 companies 15:13 22:24 company 8:2 9:6,25 10:5,15,19,21 11:2 11:7,9 21:17 24:19 30:18 49:19 51:20 61:11 66:19 69:12 company's 22:8 compare 35:13 competitor 10:14 11:11 Compile 78:14 Complaint 8:7,11 complete 24:17 68:12 68:14 completely 76:21 composition 71:3,5 71:23,25 compositions 71:8 conclusion 17:14 concrete 12:4 24:20 conditions 29:3 37:7 37:20 confidential 15:11 configuration 23:10 23:12 configurations 23:14 consumer 13:20 19:21 contained 72:18 containing 36:11 content 11:18 12:22 13:3,6,16,20,25 22:15,16 29:4 30:25 33:4,17 34:11,19 39:8 43:16 59:11 63:7 context 45:23 72:25 Continued 87:3 contract 30:20 76:6</p>
---	--	--	---	--

76:18 converted 40:19 converting 47:13 converts 44:20 COOL 1:8 copy 26:22 28:16,19 45:16,17,21,22,24 45:25 46:4,4,4,5,5 74:14,25 75:11,15 copyright 17:8,25 18:20 19:5 33:15 73:15,17,19,23 84:19,20,22,24 85:5 85:13 copyrights 33:10 corporation 10:7 corporations 10:12 correct 45:14 61:14 73:4,9 corrections 3:17 correctly 39:17 costs 14:8 counsel 7:4 49:19 count 23:25 counted 64:16 Court 1:1 3:10,20 4:9 4:12 85:15 cover 43:2,4,14,23 45:5 68:15 created 76:2 current 68:22 currently 47:8 75:13	Delaware 10:12 deliver 43:24 44:2,3,5 delivers 47:19,20 demand 28:13 83:11 demands 82:3,16 denotes 19:5 Department 8:25 9:8 9:9 45:11 75:21 84:6,9,11,17 Department's 75:25 depending 22:18 80:18 depends 41:16 82:22 deposition 3:6,7 85:7 described 42:24 76:9 Description 86:3 87:4 87:17 details 78:4 detergent 55:6 different 22:25 23:2 23:13 35:5,7,19,20 64:18 65:3,10 83:23 digital 5:13 6:3 11:18 22:17,19,20 26:12 27:5,9,13 28:8 36:20 39:8 42:6 44:9,14 45:16,21 46:5 47:13,14 61:2 67:9 80:12 86:15 87:6,18 digitally 36:5,9,10 42:19 61:24 80:7 digitized 45:6 direct 24:21 33:21 63:24 76:24 directed 36:23 67:3 direction 9:5 Directly 13:20 disagree 17:20 discs 37:11 discuss 49:11 51:5 discussing 42:21 43:13 53:3 83:20 discussions 82:7 disrespectful 70:12 distribute 12:6,23 13:19 20:11,15 22:2 24:8 36:7 40:9 41:22,24 46:16,18 46:20 48:5 71:13 75:4 78:14,16,17 distributed 12:9 37:6 37:16,19,22,25 38:20 39:14,18 41:7 41:10,14 47:14,22 48:4,23 53:3,4,5,6 59:3 60:20 87:24 distributes 13:16,25	33:9,14 distributing 37:10 38:7 46:25 47:4 distribution 5:13 11:18,19 21:19,19 21:22,25 27:6,10,13 28:8 37:7 38:4,7 39:25 40:6 47:9 48:7,8,9 84:2 86:16 87:18 distributor 22:15 distributors 59:14 DISTRICT 1:1,2 DMGI 10:15 DMS 67:8 document 5:12,18,22 6:2,6,10,14,18 17:14,18 19:7 25:9 28:3,5,13,25 29:5,9 29:25 30:5,9,10,16 31:2,12,19,21,23 32:3 34:5 37:13 38:16 41:21 48:16 50:4,23 52:4 62:9 68:6,10 69:4,6,13 69:19,20,25 70:3,14 70:16 76:12,14 81:14 82:11,13,19 86:14,18,21 87:5,7 87:9,11,13,20 documentation 35:18 documents 8:5 20:22 33:7 35:6 81:22,24 82:2 83:3,5,7,12,15 83:24 84:3 Dogs 5:6,23 20:12 36:19 41:6 42:16 46:20,25 47:5,16 56:9,17 57:12,17,24 58:6 60:18 61:22 64:4 71:12,21 73:2 73:17 74:11,12 75:5 78:23 80:23 81:5 86:10,22 doing 17:18 53:24 54:2 66:10 dollar 67:13 DOUGLAS 1:8 download 14:9 15:4 42:7 66:5,7,8 67:11 67:13,24 downloaded 19:16 downloads 19:21 24:14 64:8,10,17 65:25 68:13 DR 67:23 drafted 62:8 drive 36:15 46:3	DT 67:10,12 duly 4:5 88:9	existing 42:8 71:15 exists 66:20 expect 46:11 explain 30:8 50:19 54:25 55:15 exploit 41:24 68:16 68:17 expression 19:6 extent 9:4 47:10 E-mail 36:12 E-stores 42:5 43:16
D			E	F
DA 67:15,16,18 Darienne 2:18 data 55:8,11,12,13,14 55:15,20 56:5 58:13 58:15,17,19,22 59:9 59:11,13,15,20 60:5 60:6 61:9,12,13,18 63:11,16,18 64:12 78:11 79:4 date 47:6 58:23 61:16 77:6 dated 4:23 5:16 86:6 86:17 dates 82:21 day 1:20 47:2 85:22 day-to-day 8:23 dealing 51:13 deals 15:12 decisions 9:7 deem 51:17 Defendant 1:16 4:3 Defendants 1:10 2:12 define 70:4 defined 70:13		fact 33:17 39:10 44:17 76:16 85:7,8 false 19:24 familiar 18:7,17,19 29:17,21 30:13 46:13 84:20 familiarity 84:18 far 62:3 fax 4:22 86:6 February 1:13,20 38:19 87:23 feel 35:20 51:25 52:6 58:4 70:7 field 84:21,23 85:3 file 44:14 75:8,8,12 75:18 76:2,4,5,6 files 36:12 40:17 75:24,25 filings 3:5 fill 8:17 77:19 Finance 61:20 67:16 83:24 find 73:22 first 4:5 17:16 33:25 34:2 41:23 43:20 61:14 67:8 five 58:21 fixed 36:9 Floor 2:13 4:15 7:6 follow 41:10 follows 4:8 force 3:9,19 form 3:13 9:19 10:23 12:8,12 13:18 14:18 15:8 16:20 18:11 19:6,12,20 22:20 25:10,24 27:8,12,16 27:20 29:8 30:3 34:15 36:8 44:12,16 46:7 53:22 56:4 69:4 format 23:5,6 24:4 39:7 40:18,20 formats 22:25 23:2		

forms 21:22,24 22:16 22:17 24:5,7 47:13 forth 88:9 found 47:2 foundation 13:18 14:22 18:16 20:10 45:3 free 5:9 54:21 64:16 65:25,25 66:5,7 86:12 front 44:10 FTP 36:17 full 48:3 63:11 further 3:12,16 85:17 future 42:8 71:15 G gather 83:6,13 gathered 83:3,5,12,21 83:22 general 9:5 34:22 43:14,23 65:19 generally 24:13 45:7 generate 21:6 generated 67:21 getting 20:7 82:5 gigantic 25:15 give 13:5 16:21 24:20 32:12 45:2 48:21 49:25 53:19,23 54:20 59:22 giveaways 64:17 given 68:7 71:10,11 88:12 gives 50:19 52:19,20 53:11 giving 52:2 GLORYVISION 1:4 go 7:13 11:9 39:6 44:8 51:5 64:22 goes 15:5 19:23,24 42:2 55:8 going 10:22 11:23 15:22 34:4 37:10 46:8 47:24 67:7,10 68:5 69:24 76:11 82:8,17 85:9 gotten 72:4 Gourmet 19:17,22 graduate 7:16 Grand 2:6 grant 34:20 71:6 76:8 76:9 Grey 2:18 grounds 83:8 group 55:22 grown 26:19 guess 60:25 81:25	H H 86:2 87:2 half 74:9 hall 51:6 Hamilton 1:19 handful 47:25 handle 9:2 hand-delivered 40:4 happen 22:11 happy 12:17 16:5 38:25 hard 36:15 46:3 hear 24:11 hearing 24:11 held 1:18 10:21 help 32:11,12 helpful 65:24 hereinbefore 88:9 hereto 3:5 He'll 16:4 hired 8:17 history 22:8 60:10,11 hit 62:14 hold 57:7 holder 73:24 holds 66:12 huge 25:14 hundreds 14:4,4 22:24,24 23:3 hypothetical 11:21 12:2 15:16 20:6	61:7 72:5,10,12,18 72:19 77:16,19 78:9 79:13 84:8,11 infrequently 24:13 infringe 33:9 infringement 34:13 34:17 infringing 33:15 instance 55:3,5 63:19 interested 88:16 Internet 8:2 22:25 24:15 42:6 interpret 76:17 interpretation 69:8 69:17 investigate 35:21,25 ISRC 78:6 issue 51:14 62:22 63:6 issues 9:2 iTunes 5:2,5 14:2,8 14:12,15,23 15:2 16:14 17:3,5 19:9 19:23 20:16 21:3,8 21:11 39:7 56:19 57:2 59:24 64:24 65:2,3 73:3,20,23 86:7,9	K Kathryn 4:5 88:4,25 keeps 75:7 kind 17:22 20:10 50:2 know 10:4 20:18 23:24 24:17 25:4,10 25:14,20 26:2,11 31:3 34:24 35:2,10 36:24 40:7,11 41:5 42:18,19 44:25 45:2 45:5,9,23 46:7,10 47:6,17,21 48:3,12 57:3,13 58:12,23,25 59:7,8,9,11 60:7 61:3,9,11,17,19 62:3,8,10,18 63:8 63:10,19 64:9 66:14 66:17,18 67:17 68:4 70:6 72:3 73:10,13 73:21 75:6,7,11 77:7,8 82:7,21 85:9	legal 8:25 9:2,8,9 17:14 18:24 49:22 50:2,11 52:2 69:6 69:16 75:21,24 76:16 84:6 letter 5:16 31:17 32:6 32:8 33:5 36:22 37:4,18 38:24 39:2 39:12 64:3 86:17 let's 43:19 64:22 73:15,16 78:20 license 12:24,25 licensees 13:4 licenses 80:22 81:4 licensor 56:7,10 77:17,20,23 78:2,5 78:7,10,13 79:7,9 79:10 80:24 81:6 limitation 42:2 limited 42:5 60:4 line 76:21 87:17 line-by-line 64:22 list 13:23 24:17 38:9 38:11,13 48:2 58:10 65:23 listed 24:25 37:5,7,16 73:2 78:25 79:12 Listen 5:9 86:12 listing 38:17 56:20 58:13 59:2 61:21 66:3 72:20 73:14,15 73:23 78:23 87:21 listings 73:9 litigation 47:3 75:14 75:15 76:3,4,5 84:3 LLP 2:11 loaded 57:4 long 8:13 longer 66:20 look 16:11 24:22 49:20 52:3 60:21,23 67:4 76:25 77:14 78:20 looked 20:18 67:5 81:21 looking 13:9 16:18 17:2 19:8 20:25 24:23 56:11 64:3 70:20 78:22 looks 32:21 33:20	M mail 40:2 Main 1:24 maintained 75:19 83:15 84:16 maintaining 80:22 83:18
---	---	---	---	---	---

major 8:3	missing 73:3	numbers 66:24	60:23 61:7,16,21	72:16,22 73:4,6,19
making 17:13	misspelled 72:20,21		62:23 63:18 64:15	74:2,4,6,25 75:4,7
Management 9:4	72:24	O	65:14 66:16 67:20	76:13 78:12 79:18
61:10	misspoke 57:15	oath 3:8	67:25 68:5,25 70:15	79:19,21 80:5 81:8
map 65:5	Mitch 82:2	object 10:23 11:24	70:19 72:16 73:14	83:16 84:25 86:15
MARCHISIO 2:4	MITCHELL 2:15	34:5 50:22 70:8	74:14,17,24 76:7,23	87:6,8,10,12,14,18
marked 4:20,23 5:3,6	mobile 6:11 22:24	76:12	77:13,18 78:19	87:20
5:10,14,16,20,24	24:14 87:10	objection 8:18 9:18	79:12,16 80:16,21	Orchard's 62:23 77:3
6:3,7,11,15,19	model 65:12 66:17	12:7,11 13:17 14:17	82:19,24 83:2,7,14	78:21,24
31:24 32:6,8	models 65:4,11	15:7 16:19 17:10,12	83:17 84:4,21 85:16	Orchard-1 4:19
marketing 47:10	moment 74:22	18:10,23 19:11,19	old 27:9 61:9	74:18 86:4
marriage 88:15	MONAGHAN 2:3,3	20:2,4 23:17 25:11	once 78:12	Orchard-10 5:25
master 71:2,9,22 72:3	money 54:17	25:23 26:7,15 27:7	ones 44:10	87:5
72:13	Montvale 2:7	27:11,15,19 29:7	one-page 4:25 5:5,8	Orchard-11 6:5 87:7
material 33:9,14	MP3 23:3 24:3 40:13	30:2 33:11 34:14	5:16 6:5,17 86:7,9	Orchard-12 6:9 87:9
matter 88:17	MP3s 22:21 24:4	37:12 39:9 44:11,15	86:11,17 87:7,13	Orchard-13 6:13
MAXWELL 1:8	36:12 41:12	45:18 46:6 53:21	on-line 63:5,5,13	78:23 87:11
mean 10:18 18:18	MSN 65:9	56:3,21,23 58:16	84:14,15	Orchard-14 6:17
29:13,13 36:11 37:9	music 8:2 65:9 66:16	68:9 69:3,25 72:23	open 49:11 51:7	79:16 87:13
38:13 40:2 42:9	67:9	73:25 82:4 85:6	operation 84:15	Orchard-2 4:22
43:17 53:24 54:19	musical 23:14	objectionable 51:10	operational 40:14	28:23 32:22,23 33:6
55:15,20 58:7 63:17	musician 13:10	76:22	operationally 43:17	33:19,23,25 41:22
70:24 71:22	musicians 26:24	objections 3:13	43:20 55:19	48:16 62:8 68:5
meaning 42:18 68:13	Musicmatch 65:14,15	obligation 35:24	Operations 45:10	86:6
means 41:25 42:13,15	MusicNet 65:18 66:3	obtain 12:22 30:10	83:25	Orchard-3 4:25 16:7
43:25 44:3,5 47:14	66:12	35:22 55:12,16,18	16:10 43:3 86:7	16:10 43:3 86:7
54:22 55:2,7 67:19	N	55:19,25 56:5,8,19	Orchard-4 5:4 43:3	Orchard-4 5:4 43:3
68:4,18 70:18 71:14	N 2:1 4:2 88:1	58:15 59:2	56:11,12 86:9	56:11,12 86:9
meant 57:16	name 4:10 6:23 21:16	obtained 30:24 81:5	opinions 16:21 18:25	Orchard-5 5:8 24:22
mechanical 80:22	55:3,21,22 72:21	obviously 49:25	Orange 1:18,23	43:3 58:10 86:11
media 1:7,8 12:18	77:24	occasion 57:9 74:7,7	Orchard 1:8,16 4:4	Orchard-6 5:11 27:4
21:17 22:20 23:14	names 55:23 56:2	office 75:20,24	5:13 6:3,6,10,14,18	76:25 77:2 86:14
24:5,6 26:14 28:17	59:16,17,22 65:22	officer 3:8	7:3,22 8:14,17,24	Orchard-7 5:15
31:8 32:4,9,16,24	naming 65:22	officers 10:16,18	9:17,21 10:17,25	32:15,16,23 33:6,19
33:4 36:9,19,20	nature 11:16	offices 1:18 83:16	11:6,17 12:10,19,19	36:22 37:16 86:17
41:25 42:13,15	necessarily 12:20,21	Oh 7:20 29:15 74:21	12:22 13:15,19,24	Orchard-8 5:18
46:14,16 47:8,18,19	necessary 51:18	okay 7:8,13,16 8:4,7	14:13,14,23,25 15:6	20:20 21:2 60:24
47:22 48:11,12	need 34:6 35:20	8:10,13,23 9:14,25	17:9,25 18:4 19:13	84:7 86:18
56:12 57:11,13,20	needs 9:5	10:7,13,16 11:15	19:18,24 20:7,11,15	Orchard-9 5:22
62:11,21 63:8,14,15	never 22:5,12,13 28:4	12:5,25 13:14,23	21:6,23 22:3,13,14	20:21 60:24 64:2
68:7,18 71:14 75:2	28:10 65:16 71:25	14:6,8 15:20 16:16	23:15 24:7 25:2,2,5	86:21
75:3,8 76:8 79:2,2,9	new 1:2,19,21,24,24	17:4 18:7 19:7	25:7,13 26:10,13,23	order 51:19
79:10,13,14 80:25	2:7,14,14 4:7,15,15	20:14 21:6,10,14	27:5,18,24 28:8,17	organizations 13:15
81:10,10,11	7:6,7 8:17 10:11	22:14 23:4,9,13	29:3,3,4,6,10,22,24	80:16
members 9:13	47:20 88:6	24:19 25:21 26:5,8	30:4,5,10,17,24	original 80:4,7
memberships 64:16	Notary 1:20 3:18 4:6	26:22 27:21 28:6,14	31:7,9 32:4,9,17,21	outcome 88:16
merge 10:13	85:25 88:5,10	28:19 29:5 30:8,13	32:25 33:5,8,13	oversee 72:22 73:7
merger 10:10,17	note 49:9,16 50:6	30:22 31:4 33:18,21	34:11,16 36:5,7	owner 13:6
11:10,12	noted 50:10	35:4,17 36:4,25	37:2,6,9,15,20,22	owners 13:3
MICHAEL 2:8	Notice 1:18	37:14,18,21 38:3,6	38:5,17 39:24 40:5	P
Michigan 7:15	notify 80:17	38:21 40:3,12 41:18	40:8,22 41:2,4,7	p 2:1,1 4:2 18:8,18,21
middle 49:10	November 11:10,13	42:3,21 43:2,9,25	42:15 44:17,20	19:4
million 25:19 64:10	Now/Full 66:16	44:8 45:16 46:24	45:13 47:7,15,22	page 33:24,25 41:23
Millman 82:2,16,20	number 19:16 23:24	48:5 49:5 50:9	51:16 53:4 55:12	70:16 77:14,18 78:3
82:22	25:14,15 48:3 59:4	53:12,17 54:19,23	57:7,16,18,18,22	86:3 87:4,17
minimum 62:15	64:6 77:15 78:6	55:11,25 56:11	58:5,11,17 59:3,13	paid 14:14,23,25
minimums 62:17,18	79:17	57:11 58:14,21 60:8	60:8,19,20,25 68:11	PALLADINO 1:9
minutes 49:3			69:2 70:21 72:11,14	

<p>paper 63:2,6,9 75:8 75:18</p> <p>paragraph 33:23 41:23 42:3 48:19,21 50:19 52:15,17,19 54:3 68:25 76:10</p> <p>paramount 51:13</p> <p>Pardon 16:8</p> <p>Park 4:14 7:6</p> <p>part 8:25 9:3,6</p> <p>particular 25:9 28:4 30:16 55:5 60:6 73:16</p> <p>parties 3:5 13:21,22 13:24 88:15</p> <p>partners 6:11 78:18 87:10</p> <p>party 21:11 76:13,18</p> <p>Pascal 1:17 4:1,11 5:1 6:1,25 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1,15 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1,20 86:1 87:1</p> <p>Pascal's 49:18</p> <p>passed 21:11</p> <p>password-protected 63:14</p> <p>pause 26:6</p> <p>pay 62:11</p> <p>payment 62:15</p> <p>pays 19:22</p> <p>Penn 2:13</p> <p>people 9:17,20 10:4 83:24,25 84:12</p> <p>perform 47:15</p> <p>performance 70:21 70:23 71:16,19 78:9</p> <p>performed 40:21,25 41:3</p> <p>performing 80:18</p> <p>period 8:3 20:13,14</p>	<p>Perlman 36:23,23,25 39:6</p> <p>Permanent 24:14</p> <p>person 84:5</p> <p>photographs 55:23 56:2 59:18</p> <p>physical 12:18 22:17 36:8,19 37:11 40:13 41:11 42:11 45:22 46:3 60:9,13 61:3 62:5 80:12</p> <p>physically 42:17 44:7 80:6</p> <p>pick 26:16</p> <p>places 59:5</p> <p>Plains 1:19</p> <p>Plaintiffs 1:5 2:5 4:18 4:21,24 5:4,11,15 5:17,21,25 6:4,8,12 6:16 81:13 86:3 87:4</p> <p>Plaintiff's 5:7</p> <p>Plaza 2:13</p> <p>please 4:9 28:24 49:2 49:14 82:16</p> <p>point 17:20 22:3,7 30:20 39:15</p> <p>portion 19:23 21:10 32:18</p> <p>portions 65:11</p> <p>position 8:17</p> <p>possession 31:8</p> <p>possible 31:5,6</p> <p>practice 7:25 62:23 68:11 84:21,23 85:3</p> <p>practices 58:13 64:18</p> <p>present 2:18 4:13 33:19</p> <p>President 7:4</p> <p>pretty 22:12 45:19 77:11</p> <p>previously 81:25</p> <p>pre-existing 33:10</p> <p>price 19:10,13 77:22</p> <p>printed 77:3,9</p> <p>printout 78:20</p> <p>prior 4:17 10:17 68:19 75:15 76:4 84:25</p> <p>privilege 51:15,20 82:6 83:8</p> <p>privileged 51:23</p> <p>problem 12:14 14:20 18:13 73:22</p> <p>procedure 34:22,23 34:25 35:4,5,7,10 35:12,16</p> <p>procedures 29:14,21</p>	<p>process 30:21 40:21 40:25 41:3 44:19,22 47:12</p> <p>produced 30:17,18 31:14 69:9,11 83:3 83:11</p> <p>product 4:19 19:14 25:3 44:9 48:22 55:4 68:6 74:15 75:2 79:23 86:4</p> <p>production 79:9 81:14 82:20 87:16</p> <p>Productions 1:8 46:14,17 47:8 56:13 62:12 75:9 76:8 79:2,3,11,14 81:2</p> <p>products 20:15 47:21 53:3 59:2 62:4</p> <p>professional 55:22</p> <p>profit 19:18</p> <p>prominent 23:3</p> <p>promotional 64:15</p> <p>protect 51:19</p> <p>provide 21:25 29:21 47:8 58:17,19,22 59:9,10,13,20 62:24 64:13 69:21 77:15 77:18,24 78:4,6,8</p> <p>provided 20:10,23 46:19 60:25 61:18 62:20 74:25 78:12 79:5,14 81:24 82:3</p> <p>provider 29:4 33:17 34:11,19 63:7</p> <p>providers 39:8 66:2</p> <p>provisions 33:3 49:21</p> <p>public 1:20 3:18 4:6 11:9,11,12 85:25 88:5,10</p> <p>publicly 10:21</p> <p>publicly-held 10:21 10:25 11:6</p> <p>purchase 68:14</p> <p>purporting 56:17</p> <p>purports 19:8</p> <p>purposes 46:4 76:3 80:4</p> <p>pursuant 1:18 37:23 37:25 53:7 57:19</p> <p>purview 72:2</p> <p>put 38:24 49:17</p> <p>P-A-S-C-A-L 6:25</p>	<p>process 15:16 16:2,4 20:6 21:3 23:22 26:4 35:15 37:17 38:14</p> <p>produced 39:23 44:24 45:4,24 49:7,11,13,15 51:2,5,9 51:3,7 52:2,5,10,13 52:22,23 53:2,22</p> <p>product 54:7 57:6,21,22 58:4 65:21 68:19,22 82:9,12</p> <p>questions 10:24 12:4 15:23 32:14 65:4 85:17</p> <p>Q107 5:20,23 86:20 86:23</p> <p>R</p> <p>R 2:1 88:1</p> <p>rare 74:7</p> <p>rate 15:4</p> <p>RB 67:25</p> <p>read 34:2,7,8 39:17 48:19 49:15 50:16 52:15,16 70:6,17 74:22</p> <p>readback 68:23</p> <p>reading 17:17 55:21 76:7</p> <p>reads 37:5</p> <p>really 25:25 50:4</p> <p>realm 18:20</p> <p>RealNetworks 66:21 66:22</p> <p>receive 19:18 22:18 40:5 41:19 63:8 71:18</p> <p>received 39:19,24 40:10 41:17,20</p> <p>receives 39:21</p> <p>Recess 49:4</p> <p>record 4:10 6:24 11:22 12:5 13:9 24:25 25:2,5,8 26:23 34:3 49:9,18 57:8,23 58:5,8,10 66:5,6 74:3,6 77:25 88:11</p> <p>recorded 63:18</p> <p>recording 68:14</p> <p>recordings 36:4 40:12 41:24 42:4 44:4,6 46:18 47:20 53:16,19 54:16,18 54:20 55:8 68:12,17 74:4,4 78:15 79:25 80:3</p> <p>records 57:10 68:12 74:8 83:18,19,20</p>	<p>Red 40:18</p> <p>referred 48:17</p> <p>refers 69:20</p> <p>reflect 63:21 66:24</p> <p>regarding 5:2,5,9 86:8,10,12</p> <p>related 88:14</p> <p>relates 51:15</p> <p>release 6:19 57:11,16 57:23 74:5 87:14</p> <p>released 57:9 74:3,8</p> <p>rely 64:12</p> <p>remember 48:2 52:25</p> <p>remit 71:18</p> <p>removed 40:19</p> <p>repeat 49:13 54:13</p> <p>replace 8:16</p> <p>replaced 8:21</p> <p>report 65:13 66:11,22 72:9</p> <p>reported 64:20 66:2 66:18 80:9,13,14,15</p> <p>Reporter 4:9,12 88:4</p> <p>Reporting 1:19,23</p> <p>represent 25:13 26:10</p> <p>representation 4:19 33:16,18 34:10,19 74:15 75:2 86:4</p> <p>representative 69:12</p> <p>representing 81:8</p> <p>request 28:7 38:16 39:3 82:11,20 87:16</p> <p>requests 38:23 81:14</p> <p>reread 49:6 52:21</p> <p>resalers 43:16 59:14 73:8</p> <p>reserved 3:13</p> <p>respective 3:4</p> <p>respond 38:25</p> <p>responses 83:2</p> <p>responsibilities 8:24</p> <p>responsibility 72:17 73:7</p> <p>responsible 80:21</p> <p>responsive 82:3 83:11</p> <p>rest 32:19</p> <p>restate 65:20</p> <p>restriction 53:11</p> <p>restrictions 48:11,12 48:15,22 50:20 52:19,20 53:8,9,13 53:14 54:9,10</p> <p>restricts 53:24 54:2</p> <p>results 6:15 87:12</p> <p>retail 78:18</p> <p>retailer 21:25 22:4,13 64:21</p>
--	---	---	---	---

retailers 22:2 80:17	37:18,19 39:16,17	38:21 39:9,16 43:5	86:19,22	sure 20:17 22:12 33:13 39:4 40:16 66:14 73:8 77:12
retailer-by-retailer 64:19	50:14 55:9 56:12,13 61:13 62:19 63:20 69:19 73:17	43:9 44:11,15,23 45:18 46:6 48:25 49:5,16 50:12,21 51:8,24 52:12 53:21	sorry 52:25	Sweetie 19:17,22
revenue 21:7,10 67:21	scanned 45:6	53:25 54:4,12 56:3	sort 36:16	sworn 3:7,9,20 4:5 85:21 88:9
reverse 11:12	school 7:10	56:21,24 58:16	Sound 72:8,10	symbol 19:4
review 8:5,10	screen 5:2,5,8 16:14 17:2 20:8 24:23 86:7,9,11	63:23 65:19 66:4 68:9,21 69:3,11,18 69:23 70:8,11 72:23	South 1:24	systems 84:15
Rhapsody 5:8 24:24 39:7 58:9,14,18,20 58:22,24 59:2 86:11	sealing 3:5	73:25 74:19 76:11 77:4,8 81:7,11 82:4	SOUTHERN 1:2	
Rhapsody's 58:12	search 6:15 87:12	82:20 85:6	space 10:15 63:14	
right 1:7 21:17 24:5,6 28:17 31:9 32:4,9 32:13,16,24 33:4 34:8,20 42:4 46:13 46:14,16 47:8,18,19 47:22 48:11,13 51:8 53:10 55:21 56:13 57:11,13,20 62:11 62:21 63:8,14,15 68:7,16 71:7 75:3,3 75:8 76:8,9 79:2,2,9 79:10,13,14 80:18 81:2,10,10 84:7	second 4:15 7:6 48:24	shot 5:2,5,9 16:14 17:3 20:8 24:24 57:3 86:7,9,12	speak 49:22	
rights 21:13,15 22:18 24:14 25:19 34:21 41:16,18,20 42:7,12 53:15 55:18 57:19 57:25 71:6,10,11,13 76:9 78:9 81:12	section 65:12	show 15:18 16:6,9 19:8 20:19 27:4 28:22 32:7,15 34:7 43:11 74:18 81:16 82:10	speaking 51:11	
rights-wise 43:18	securing 80:22	showed 82:19	speaks 34:5 37:13 39:12 50:5,23 52:4 68:10 69:4,14 70:2 76:14	
ring 23:4,6,9,10 24:3 24:9 41:12 61:25 67:24	see 12:13 18:2,3,4 31:12 56:13 84:16	showing 16:22,25 17:15 20:9	specific 12:3 13:8 15:17 43:11,12,21 44:18 50:25 51:4 63:24 73:15 82:9,12	
ringback 24:10,12	seeing 48:2	shown 41:21 74:14	specifically 21:2,3 60:4 76:2	
ringbacks 24:9 62:2 68:2	seen 8:7 28:2,4,10,16 65:16 74:16 81:23	side 71:2,3,5,9,22,23 72:2,3	specify 54:10	
ring-ring 24:11	sell 21:3 23:15 24:5,8 41:22,23 42:4,10,12 53:15 54:16 55:7 60:8,13,18 69:2	sign 26:23	spell 6:23	
ripped 45:6 46:2	selling 21:7 54:18 68:12	signed 3:7,9,18,19 31:8	staff 9:11,12	
ripping 42:22,23,24	sells 26:13	signing 30:23	stand 18:21	
Rockland 1:18,23	send 11:21 14:16 29:24 30:4 36:11	simple 65:7	stands 19:4	
royalties 70:22,23 71:7,17,20 72:8,13	sending 30:25	simply 65:22	stand-alone 65:16	
royalty 62:25	sends 12:5	slash 73:18	start 43:19	
RUSSELL 1:9	Senior 7:4 9:3	societies 80:18	state 1:20 4:6,9,13 6:23 88:5	
R-I-G-H-T 21:17	sent 12:18 29:6,9 39:5 62:16 82:22	society 72:7	statement 20:25 29:2	
S	separated 75:23	sold 19:9 22:16 39:7 41:11 42:15,17,18 61:6,22 62:4 63:20 68:8	statements 20:18,23 60:22,24 61:2 62:20 62:24 63:2,6,9 65:17	
S 2:1 4:2,2 67:6,20,20 86:2 87:2	separately 53:15,18	somebody 36:11,12 72:22 73:4,6 83:17	STATES 1:1	
safeguards 34:12	service 65:16 67:9	song 24:11 59:16,16	Stenotype 88:4	
sales 20:24 61:3,4 62:6 64:20 80:4,9 80:11	services 47:7	songs 5:2,6,9,19,23 17:6 19:8 20:11,12 21:3,7 24:24 25:8 36:18,19 41:6,6 42:16,16 46:20,21 46:25,25 47:5,5,16 47:16 56:9,9,17	steps 34:12,17	
Sam 36:23,23,25 39:6 39:19	set 10:11 19:13 88:9	57:11,12,17,17,23 57:24 58:6,6,10 60:18,19 61:22,23 64:4,15 71:12,12,20	STIPULATED 3:3 3:12,16	
saying 18:6 54:24	sets 19:9	71:21 73:2,3,17,17 74:10,11,12,13 75:4	STIPULATIONS 3:1	
says 17:24 18:3,3	severed 68:7	75:5 78:23 80:23,23 81:5,5 86:8,10,13	storage 42:7	
	shareholders 10:20	streams 24:9 66:25 67:21	store 5:20,24 17:5 72:15 86:20,23	
	Shelowitz 2:11,15 8:18 9:18 10:22 11:23 12:7,11,15 13:17 14:10,17,21 15:7,15,21 16:3,8 16:19 17:10,13,19 18:10,14,23 19:11 19:19 20:2,5 23:17 25:11,23 26:3,6,15 27:7,11,15,19,22 28:14 29:7 30:2 31:13,16,22 32:5 33:11 34:4,14 35:8 35:17 37:12 38:12	structured 10:20	stores 6:3,7 22:25 26:13 59:21,23 61:22 72:18 87:6,8	
		subject 48:10,14	straightforward 45:20	
		supervised 84:5	streaming 21:20 70:25	
		supplemental 39:2	streams 24:9 66:25 67:21	
			Street 1:24	
			Strike 57:14	
			structured 10:20	
			subject 48:10,14	
			supervised 84:5	
			supplemental 39:2	
			times 61:10	

title 7:2	unrelated 82:13	20:20 23:23 24:22	1997 73:18	8
titles 20:24 37:5,16	UPC 79:16,17,19,21	25:25 26:5,8,19	1999 10:2,5 11:7	845 1:25
37:23 38:18 39:13	79:23 80:4,5,7	28:23 29:20 31:15	26:17,18 29:22	9
39:25 40:6,9 41:14	UPCs 79:24	31:20 35:18 44:17	34:23 35:25 41:4,7	95 7:20
47:13,25 59:16 61:6	use 22:25 28:9 30:12	49:10 52:14 54:15	41:14 42:14 47:24	99 14:9 15:5 19:17,22
87:22	33:12 35:6 42:22	64:7 66:9 70:5,12	73:11	19:23
today 8:5,11,12 11:3	55:2,8 73:16	74:18 76:16,24	1999-2000 26:12,24	
11:4 40:23,24 41:2	uses 27:18 67:17,17	77:13 85:8 87:19	42:9	
47:24 53:10 58:19	87:19	88:8,12		
told 36:2 64:11	u-trial 64:16	word 73:3	2	
tone 23:6,9,10 24:3	U.S 9:22,23	wording 35:19 53:2	2 70:16	
tones 23:4 24:9 41:12	V	words 11:15 50:18	2/1/00 5:16 86:17	
61:25 67:24	vague 15:22,25 18:14	54:20,23	20 1:24	
top 9:2 56:12	valid 27:14	work 7:21 29:16 30:6	2000 10:5 17:8,24	
total 61:21 63:20 64:5	value 53:15,18 54:16	36:2 61:20 73:13	18:3 26:17 29:15,16	
67:11,14	55:10	84:14	29:18,22 34:25	
track 14:8 15:4 19:16	various 24:4 83:23	worked 8:2	35:14,25 38:19 41:4	
19:21 72:20 73:8	verify 34:12,17	Worldwide 9:22 14:6	41:8,15 42:14 73:12	
78:3,4 79:25	versus 46:5	14:7	73:15 87:23	
tracked 63:16 80:3,7	Vice 7:4	wouldn't 30:11	2005 78:22	
tracks 25:20 68:15	W	writing 85:5	2007 11:13 78:22	
track-by-track 68:8	waived 3:6	written 77:6	2008 1:13,20 85:23	
68:13 69:2	want 11:20 15:18	X	21 1:13	
trade 71:8	32:7 34:9 38:24	X 1:3,11 86:2 87:2	21st 1:20	
transcript 88:10	40:14 44:18 49:6	Y	23 63:20,21,22 64:6,7	
transfer 36:16 85:5	50:6,15,16,17,24	yeah 55:17 70:18	64:8,10	
transferred 44:13	52:3,14,21,23 54:13	78:19	230 64:10	
transmission 42:7	82:8,10,11 85:10	year 7:20 74:9,9	25th 78:21	
tread 50:8	wants 32:12	years 8:15 29:14 35:3	28 2:6 87:18	
treading 52:7	warranty 34:18 35:21	58:21	29th 78:22	
trial 1:16 3:14 4:18	wasn't 35:9,14 57:21	York 1:2,19,21,24	3	
66:7	way 10:11 23:11 30:7	2:14,14 4:7,15,15	3 41:23 42:3 43:6,7	
trials 65:25	88:16	7:7,7 10:11 88:6	48:19 54:3 68:25	
true 19:24,25 66:12	ways 36:14	S	76:10 77:15	
88:11	website 22:9 28:11	\$50.00 62:19	38 87:20	
try 16:3 51:2 71:17	77:3 78:21,24	\$9.99 19:9,10,13	4	
trying 44:21	went 7:10 36:19	0	4 43:6,7 77:18 86:4,6	
two 9:10,12,12 41:14	42:10	07 61:14	86:7	
74:8	West 2:6	07645 2:7	445 1:19	
two-page 4:22 5:18	we'll 28:14 38:21,25	1	5	
5:22 6:9,13 86:6,18	43:11 52:7	1 19:16,21	5 43:6,7 64:10 78:3	
86:21 87:9,11	we're 13:22 21:25	1st 38:19 87:23	86:9,11,12,14,17,18	
type 70:23	51:12 64:3 71:10	10 10:6 48:2 87:20	86:21	
types 24:4	83:20	10,000 25:16	5th 2:13	
U	we've 10:10 31:13	10:15 1:13	5/10/07 4:23 86:6	
Uh-huh 17:7 48:18	52:16 60:2 67:20	100 4:14 7:6	500,000 25:18	
unaware 35:24	72:4 74:7	10001 2:14	53 64:10	
undergrad 7:14	whatsoever 45:4	10017 4:16 7:7	6	
understand 8:20	White 1:19	10956 1:24	6 87:5,7,9,11,13,18	
11:25 16:24 37:17	wholesale 22:15	11 2:13	60 9:24	
46:9 50:17 52:24	77:21	13 43:8 78:19,20	634-4200 1:25	
54:24	wholesaler 13:22	14 43:8 78:19,20	7	
understanding 19:2,3	wire 15:3	1996 73:18	7 32:8	
85:13	withheld 83:7			
understood 23:7	witness 1:17 4:2,11			
UNITED 1:1	4:14 8:21 15:9 18:2			
universe 70:18				